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Current Topics.

Amendments of the New Property Statutes.

AN INTERESTING suggestion has been made that in view of the fact that amendments to the new Property Acts may be expected to be introduced into Parliament in the course of the autumn session, opportunity should be given for the discussion in the columns of THE SOLICITORS' JOURNAL of those points in respect of which amendments may seem to our readers to be desirable. The suggestion is one which may lead to important practical results; for our readers can reveal matters that may so far have been overlooked and can point out from their own practical experience principles and details in which the actual working of the Statutes may be facilitated. We are, therefore, prepared to adopt the suggestion. Suggested amendments of general interest received from our readers will be published from time to time, and expressions of opinion upon them will be welcomed in our columns. By following this plan, no corner of the ground will, it is hoped, be left unturned before the introduction of amending legislation.

The Late Mr. A. J. Lawrie, K.C.

BY THE sudden death of Mr. A. J. LAWRIE, K.C., Deputy-Chairman of the County of London Sessions, the administration of justice in the metropolis suffers yet another serious loss. Mr. LAWRIE received his appointment in 1911, at the early age of thirty-eight, when he succeeded Mr. R. LOVELAND LOVELAND, K.C. The appointment was viewed as being in the nature of an experiment, but the new Deputy-Chairman fully justified the choice, and upheld the traditions of his office. On taking his seat at the Central Criminal Court on Tuesday, the Recorder, Sir ERNEST WILD, K.C., in expressing his sorrow at the loss of a personal friend, who was a keen sportsman and a judge of wide human intelligence, paid a noble tribute to the work of Mr. LAWRIE during his fifteen years on the Bench. "Mr. LAWRIE," said the Recorder, "was one of the—now happily many—judges in the land who had to administer the criminal law, who had a clear conception of the modern theory of punishment, which sought, wherever possible, to make the primary object the reformation of the criminal. In that great work, the late Deputy-Chairman had played an influential part, and his memory would be endeared to us as that of a man who has done much to promote the Kingdom of Righteousness."

In *Curia Parliamenti.*

COMPARATIVELY few matters of special interest to the legal profession were referred to in the King's Speech on the opening of the new Parliamentary Session. Amongst others, special Bills relating to the following matters were foreshadowed: National Health and Unemployment Insurances, the Rating of Railways, the Control of Road Vehicles, the Position and Powers of Boards of Guardians, and Rating and Valuation of Machinery in Scotland. Hope was expressed that it may be possible to carry further the very desirable process of consolidating the main statutes regulating the local government of the country.

It is clear that most of the time of Parliament during this new Session will be taken up with the discussion of the Estimates for the Public Service, with the passing of the Finance Bill and the new Electricity Bill, and with the consideration of the situation in the Coal Industry. Several measures for which there is an urgent need have apparently to stand over until another Session. The most conspicuous of these is the Factory Bill, consolidating and amending the scattered mass of our factory legislation.

Breach of Promise.

AT ONE TIME sympathetic juries were wont to give heavy damages in breach of promise cases, occasionally out of all proportion to the defendant's means. These awards were at length found to defeat their own purpose. On the other hand, since the war, in cases where judges have fixed the damages, the tendency has been to name a sum so far within the defendant's means, that it is worth his while to pay it off and be absolved from his promise to marry. In two recent trials, however, heavy damages have again appeared, one a four-figure award in the Privy Council and another for £750 in favour of a young lady from Switzerland. The merits of this form of action have, of course, been discussed in a thousand debating societies, including the House of Commons, which in 1879 entertained a motion by Sir FARRER HERSCHELL, afterwards Lord HERSCHELL, L.C., that it should be abolished, save in respect of proved out-of-pocket expenses. The motion was opposed by the late Lord HALSBURY, then Sir HARDINGE GIFFARD, so with two future Lord Chancellors doing battle, the warfare was on the grand scale. Lord HERSCHELL carried his motion, but the House has slept on it ever since, so the victory may be regarded as academic. The matter of breach

of promise was originally one for the Ecclesiastical Court only, which, on proof of the facts, pronounced a simple, yet awful, "Sentence for matrimony, commanding solemnisation, cohabitation, consummation and tractation, such as becometh man and wife to have," see 2 and 3 Edw. VI, c. 23, s. 2 (1548). Specific performance was, however, abolished by Lord HARDWICKE's Act in 1754, but long before then the judges in the King's Bench had entertained civil actions for damages. Possibly the earliest reported case is *Baker* v. *Smith*, 1651, Style's Reports, 295, in which, however, it was mentioned that similar actions had already been successful. It was then laid down that there was a temporal loss and therefore a temporal remedy. *Palmer* v. *Wilders*, Cro. Jac. 66, appears to relate to the "maritagium" for a ward. The truth about breach of promise is of course, that an excellent case can be made either for retaining the form of action or abolishing it. The real need is to amend the law, so as to eliminate the blackmailer and professional female flirt, while retaining for the victim of the male philanderer her proper right of action.

A Modern Tendency in Legislation.

AN IMPORTANT and growing feature of our modern system of legislating has been noted by all who are interested in the laws and conventions of our Constitution. Sir JOHN MARRIOTT, M.P., recently referred to this feature in the following words: "Modern statutes, or many of them, are mere *cadres*, laying down general rules, but leaving it to the departments concerned, by the issue of Administrative Orders, to give substance to the legislative skeleton." The net result of this modern tendency is to confer upon administrative or permanent officials wide legislative authority. The columns of THE SOLICITORS' JOURNAL have for some weeks borne testimony to the legislative activities of Government Departments, for a good deal of our space has been taken up with Statutory Rules and Orders; and there are more to come. The complexities of the modern, industrial, commercial and social life of the community make it utterly impossible for the Houses of Parliament to fill in all the details of a modern statute. Hence the delegation of legislative powers by the principal statutory enactments for the last quarter of a century. Parliament retains its nominal legislative absolutism. It still *can* make and unmake any rule of law including a departmental order. The change is that Parliament *does* not in practice make and unmake rules and orders. The position brings to our mind the traditional accounts of the councils of the great men which met in the 12th and 13th centuries. These meetings in effect passed general resolutions to which replies by way of remedies were issued by the King in the form of administrative orders, assizes or ordinances which were and still are in effect treated as statutes. The only differences between the ancient and modern practices are that a modern statute indicates more or less specifically the line of redress or advance, and that it is the departmental chief who now dispenses regulatory justice from his store of administrative prerogative.

The Morris Appeal.

Two points of importance emerge from the Morris Appeal. The first is that applications made before the trial, as, for instance, for postponement, do not raise any issues in the case. Such applications are entirely in the discretion of the judge, and the strict rules of evidence cannot be regarded as applying thereto. The *Morris Case* itself further clearly illustrates the danger of making applications without sufficient reason, for, as the learned Lord Chief Justice pointed out: "People who make applications in a court must expect sometimes to receive unfavourable answers. But the Court of Criminal Appeal did not lay down any such proposition, that, where as a result of any such application, the accused had been seriously prejudiced, the court could not interfere." In the Morris Appeal the court, after a consideration of all the facts, came to the conclusion that the accused had had as fair a trial as could be desired, and this view is emphasized by the fact, as the Attorney-General pointed out in his argument, that Mrs. MORRIS had been acquitted on the only count on which there could have been any doubt as to her guilt. Secondly, the *Morris Case* is a direct authority for the proposition that a sentence of simple imprisonment may be given to follow consecutively upon a sentence of two years' imprisonment with hard labour. Such cases as *Goldstein's*, 11 Cr. App. Rep. 27, *Boreham's*, 13 Cr. App. Rep. 191, and *Hughes'*, 17 Cr. App. Rep., 127, are distinguishable since the court was in those cases dealing with consecutive sentences, which were both sentences of hard labour, and not with the passing of a consecutive sentence of simple imprisonment on a previous sentence of hard labour. The remarks of the Lord Chief Justice upon the *Morris Case* seem very pertinent, viz., that it could only be hoped that before a case of this description should come again for trial the Legislature would have removed a blemish from penal legislation, and have given a discretion where a multiplicity of offences of a certain kind had been committed, to impose a sentence of penal servitude.

Assessment of Salary free of Income Tax.

THE RECENT decision of the House of Lords in *Hartland* v. *Diggines* (70 SOL. J. 344), has decided an important point with regard to assessments of salaries paid free of income tax. In that case the appellant was paid a salary of £500 for the year ending 5th April, 1919, but the assessment was based on a further sum of £80 5s. The appellant's employers had been in the habit of paying every year the income tax in respect of the salaries of its employees, and the amount thus paid by them in respect of the appellant's salary for the year in question was £80 5s. This payment, together with similar payments made by the appellant's employers, were included in their working accounts under the heading "Income Tax Staff," and had been allowed as a trade expense, and had been deducted in arriving at the profits of the appellant's employers. It should be observed that no agreement whatsoever, whether verbal or in writing, had been entered into by the employers with the appellant as to the payment of income tax in respect of his salary. Now Rule 1 of Schedule E provides in effect that tax under that Schedule shall be payable in respect of all "salaries, fees, wages, *perquisites* and profits whatsoever therefrom for the year of assessment," and Rule 4 (3) (which has since been repealed by the Finance Act, 1922, Sched. III, Pt. I), provided that: "Perquisites shall be deemed to be such profits as arise in the course of exercising an office or employment from fees or other emoluments." Reference may usefully be made to *Blakiston* v. *Cooper*, 1909, A.C. 104, where it was held that *voluntary* Easter offerings of money given to an incumbent were assessable under Sched. E, inasmuch as they were given for the purpose of increasing his stipend, and were to be regarded therefore as profits accruing by reason of his office. The fact that the payments were voluntary did not prevent them from being assessable, though it should be observed that when the payment is made as a testimonial or tribute, it will not be taxable (see *Cowan* v. *Seymour*, 1920, 1 K.B. 500). The *ratio decidendi* of *Blakiston* v. *Cooper* is to be found in the following passage from Lord LOREBURN's judgment. "In this case," said Lord LOREBURN (at p. 107) "there was a continuity of annual payments apart from any special occasion or purpose, and the ground of the call for subscriptions was one common to all clergymen with insufficient stipends. What you choose to call it matters little. The point is what was it in reality." The House of Lords accordingly held in *Hartland* v. *Diggines* that inasmuch as there had been a continuity of annual payments by the appellant's employers, whereby the appellant, although he had not received cash, had at any rate received money's worth year by year, the appellant had been rightly assessed in respect of the further sum of £80 5s.

The Conveyance of Land

"Free from Incumbrances" and Recitals to that Effect.

In Mr. F. A. Stirk's letter appearing in this journal on the 23rd January last (70 Sol. J. 322, 323), it is suggested that a passage in the present writer's book on "Vendor and Purchaser," p. 613, note (*g*), 3rd ed., may be erroneous and that "it is very misleading to the practitioner."

The passage in question is appended in a note to a statement in the text that "although a contract to sell land is an absolute undertaking, express or implied, to sell the fee simple or other estate specified, free from incumbrances, it is settled that, in the absence of express stipulation to the contrary, a vendor of land is not bound to give, in the conveyance of the land, any manner of warranty of title other than is afforded by" the usual qualified covenants for title. The note is: "*For this reason*, if the conveyance as prepared on the purchaser's behalf purport to assure the land to be held by him 'free from incumbrances,' the vendor should strike out these words, as they might import an unrestricted warranty at common law that the lands were free from incumbrances; see *Ex parte Stanford*, 17 Q.B.D., 259, 271." Mr. Stirk cites this note, but with the omission of the words "for this reason" (which, it is submitted, clearly connect the note with the passage in the text), and without referring to that passage. He then says that on the authority of this passage he has always objected, when acting for a vendor, to the words "free from incumbrances," whether occurring in a recital or in the habendum or testatum of a purchase deed submitted for approval. And he propounds the questions (1) whether the present writer's statement is correct, (2) whether the words are objectionable in a recital or only in the testatum or habendum of the deed, (3) whether a purchaser is as a matter of right entitled to any recital of seisin at all, and (4) to what covenants for title a purchaser is entitled under an open contract; and he says that on all these points he has not been able to find any really conclusive authority.

First, as to the passage in the writer's book, it is submitted that it clearly refers only to the conveyance of land "free from incumbrances" in the testatum or habendum. The words used are "purport *to assure* the land *to be held* by him free from incumbrances." A vendor does not (at least if advised by a competent conveyancer) purport to assure the land sold by the recitals, he does so by the operative part of the deed; and it is in the testatum alone, and the habendum (which is a part of it), that it is expressed how the land is to be held, whether in fee simple or for a less estate, etc., or whether subject to any incumbrance. It is submitted therefore that, for this reason, and also because the note is clearly dependent on the passage in the text, no reader, who weighs the words actually written, could reasonably suppose that the passage has reference to the insertion of the words "free from incumbrances" in a recital, which is no conveyance of the land sold or assurance *that it shall be held* free from incumbrances, but is merely a statement that it is so. Besides this, in an earlier passage in the book, p. 591, 3rd ed., the question of the insertion of a recital of the vendor's seisin had been already discussed, and this statement made: "The old conveyancing practice was to recite the conveyance to the vendor; but if any recital at all be made, it is best for the purchaser that it should be a precise recital (as of the vendor's seisin in fee, in the case of freeholds) sufficient to estop the vendor and all claiming under him from setting up a legal estate, which they have not at the time of conveyance, but may subsequently acquire."

Secondly, it is submitted that the words "free from ncumbrances" are only objectionable in the operative part the testatum or habendum) of a conveyance on sale, where hey might have the effect of varying the vendor's qualified ovenant (whether express or implied by his conveying as beneficial owner) that the land is free from incumbrances, and might amount to an absolute warranty that the land *is* free from incumbrances. And it is submitted that the court would uphold the contention of a vendor who had struck out the words in question from the operative part of a draft conveyance prepared by the purchaser; and that the proper course for the vendor's counsel or solicitor to take is to strike those words out. But it is thought that if a vendor of land has by the contract agreed, either expressly or impliedly, to sell the land in fee simple free from incumbrances, he cannot reasonably object to a recital in the conveyance, that he is seised of the land sold for an unincumbered estate in fee simple; and that the court would not uphold such an objection. Precedents of such a recital are given in conveyancing books of high authority, without any hint being given that a vendor would be entitled to object to it: see Sugden's V. & P., 558, 14th ed.; Davidson's Prec. Conv., vol. 2, pt. I, 229, n. (*a*), 269, n. (*b*), 354, 401, 402, 4th ed.; 1 Key and Elphinstone's Prec. Conv., 398, 4th ed., by the late Mr. Key; 474, 10th ed.; Davidson's Concise Precedents, 133, n. (*c*), 19th ed. The only practical effect of such a recital appears to be that the precise statement of the vendor's seisin in fee may operate by way of estoppel in the manner above stated; and where the vendor has expressly or impliedly sold the fee simple free from incumbrances, there seems to be no good reason for his objecting to the possibility of such an estoppel taking place. The passing of a legal estate by estoppel in this way has been a very rare event, and under the present law it is thought that it can hardly ever occur. Such a recital, if incorrect, cannot, it is submitted, of itself amount to a false representation, which would give rise to an action against the vendor after completion; for, to have that effect, the representation must have been made knowingly or recklessly and must have induced the purchaser to enter into the contract: see Williams' V. & P., 614, 797, 803, 1086, 1085, 3rd ed. And it is thought that such a recital does not amount to a warranty that the vendor's title is as so stated.

Thirdly, it is submitted that for the reason already given a purchaser of freehold land from a vendor, who has expressly or impliedly sold it for an unincumbered estate in fee simple, *is* entitled, if he likes, to have a recital of the vendor's seisin in fee inserted in the conveyance: see the conveyancing books above cited.

Fourthly, it is submitted that the law is settled that a vendor of land under an open contract cannot be required to give *absolute* covenants for title; he is only bound to give the usual *qualified* covenants for title. And it is submitted that the present law is that this qualification is that the vendor is only bound to covenant against the acts, omissions and sufferances of himself and his predecessors in title subsequent to the last previous sale of the land, or the last conveyance thereof for other valuable consideration whereon proper covenants for title were given: see *Loyd* v. *Griffith*, 3 Atk. 264, 267-269; *Wakeman* v. *Duchess of Rutland*, 3 Ves. 233, 235, 236, 504; *Browning* v. *Wright*, 2 Bos. 9 Pub. 13, 22; *Pickett* v. *Loggon*, 14 Ves. 215, 239; *Church* v. *Brown*, 15 Ves. 258, 265 and n. (1); *Blakesley* v. *Whieldon*, 1 Hare 176, 181; Sugden's V. & P., 574, 14th ed.; 1 Dart V. & P., 544, 545, 549, 5th ed.; 567-569, 572, 7th ed.; Davidson's Prec. Conv., vol. 1, 118, 203, n. (*b*); vol. 2, pt. I, 191, 192, 205, 214, 215, 4th ed.; Williams on Real Property, 348, 1st ed.; 448, 13th ed. (666, 667, 23rd ed.). It will be seen from these authorities that there was formerly a certain difference between the practice of conveyancers and the rule of the Court of Chancery in actions for specific performance, *not* as to whether the vendor's covenants should be absolute or qualified, but as to how far back the covenants ought to extend, where the vendor had become entitled, not by purchase, but by descent, devise or settlement. The "universal and settled" practice of conveyancers was to make a vendor covenant against the acts, etc., of all his predecessors in title back to the date of the

last previous sale; but the old rule of the Court of Chancery was to confine the covenants for title of a vendor, who had not become entitled by his own purchase, to the acts, etc., of the person (ancestor or testator) from whom he had immediately derived his title. Mr. Dart, however, stated in the 5th ed. (1875) of his V. & P. (vol. 1, p. 545) that "the courts would probably at the present day be inclined to sanction the practice of conveyancers by decision." And this statement has been endorsed by the subsequent editors of his treatise: p. 617, 6th ed.; 568, 7th ed. Since the Conveyancing Act, 1881, came into operation, the general practice of conveyancers has been for a vendor to give the qualified covenants for title implied by his conveying as beneficial owner. These covenants extend to the acts, etc., of the party so conveying and anyone through whom he derives title otherwise than by purchase for value, not including a conveyance in consideration of marriage; and they are substantially in the same form as that of the old express covenants for title, which a vendor was bound to give. But it appears that a vendor, who claims under a marriage settlement, wherein *vendor's* covenants for title were given, would be entitled to have the statutory covenants varied by a proviso that his liability should extend only to the acts, etc., of himself and his predecessors entitled subsequently to that settlement: see 1 Williams' V. & P., 617, 620, 621, 3rd ed. The writer's experience as one of the conveyancing counsel of the court has been that in conveyances to be made by vendors and directed, in actions for specific performance, to be settled by the judge, the insertion of the covenants for title is regulated according to the present conveyancing practice. And it is thought that this rule would now be upheld by the court.

It is worthy of note that, although Sugden (V. & P., 558, 14th ed.) speaks of the recital of a vendor's seisin in fee as a common recital, the editors of Davidson (Prec. Conv., vol. 2, pt. 229, n. (*a*), 4th ed.) do not treat this recital as a matter of common practice, but recommend its use where it is desired to secure the benefit of s. 2 of the Vendor and Purchaser Act, 1874, making recitals in deeds twenty years' old *primâ facie* evidence. It was held by MALINS, V.C., in *Bolton* v. *London School Board*, 7 Ch. D. 766, that such a recital in a deed twenty-five years' old would exonerate a vendor from the obligation of showing any earlier title. The writer, in his book on Vendor and Purchaser, made a vehement protest against the correctness of this decision; and his reasoning was subsequently approved of by the late Lord SWINFEN (when Mr. Justice SWINFEN EADY) in *Re Wallis and Grout's Contract*, 1906, 2 Ch. 206, 210: see 1 Williams' V. & P., 125, note (*y*), 3rd ed.

The writer is not aware of any precedent, in any book of conveyancing practice, for the conveyance by a vendor of the land sold, in the operative part of the deed, as being "free from incumbrances."

T. CYPRIAN WILLIAMS.

The Admissibility of Carbon Copies of Solicitors' Letters in Evidence.

No copy of a document is admissible in evidence when the original is available, and even if the original is not available, the copy will not be admissible in evidence unless, (1) some person not necessarily the maker of it can swear to its accuracy as a copy of the missing original, or (2) there is some presumption attaching to the copy itself from which its accuracy can be inferred.

The principle is well defined in that old book which used to accompany every practitioner on circuit known as "Buller's *Nisi Prius*," under the nine general rules of evidence therein specified commencing at p. 293 of the 7th Edition thereof. The first rule, which is a perfectly accurate statement of the law to-day, is as follows: "No such evidence shall be brought that *ex naturâ rei* supposes still greater evidence behind in the party's possession or power, for such evidence is altogether insufficient and proves nothing, as it carries a presumption with it contrary to the intention for which it is produced . . . but if he prove the original . . . to be destroyed without his default, a copy will be admitted because then such copy is the best evidence: the presumption of greater evidence behind in the party's possession being overturned by positive proof."

In the case of *Fisher* v. *Samuda*, 1808, 1 Campbell 189, where a letter was called for on behalf of the plaintiff under a notice to produce, and was not forthcoming, and the plaintiff's letter book, into which he had copied the letter in his own hand, was offered as secondary evidence of the contents of the letter not produced, Lord Ellenborough said, at p. 193:—

> "Where secondary evidence is let in, it is subject to the same rules as the best evidence which the case admits of. The evidence as to the contents of written instruments, when they cannot be produced themselves, must be of a nature which the law would receive in other instances; and the purport of this letter must be proved by the testimony of some indifferent witness who took a copy of it, or who actually read it."

There would be no difference between handwritten copies, press copies or carbon copies on the question of admissibility, but there well might be differences in the weight to be attached to evidence tendered by means of such copies, for in the case of the press copy evidence as to custody of the book in which the press copy was kept and the surrounding circumstances might render the evidence given by the proof of such a copy of more weight than the evidence given by proof of a loose carbon slip which might more easily have been tampered with, whereas in the case of the handwritten copy further evidence might be forthcoming as to the conditions under which the actual words were written which might add to the weight of that evidence. In this connexion it is noteworthy that it is not necessary to call the person who wrote the copy. What is required is the testimony on oath as to the accuracy of it as a copy of the missing original: see *Kensington* v. *Inglis*, 8 East 289. If the copy is otherwise admissible, the fact that it is made by a machine would probably raise the presumption in favour of the person tendering it in evidence that it is a correct copy, and the onus would then be upon the other side to rebut this presumption: see *Nodin* v. *Murray*, 3 Campbell 228; *Simpson* v. *Moreton*, 1842, 2 Moody and Robinson, 433; and *Rex* v. *Watson*, 2 Starkie, 129; but the cases are not absolutely clear on this point. Even if a machine-made copy of a letter has not become admissible in evidence in place of a missing original, it may still be admissible, not as a letter sent, but as a letter written in the handwriting of the plaintiff amounting to an admission: see *Nathan* v. *Jacob*, 1859, 1 Foster and Finlayson, 452.

Proof that an entry was made in the ordinary course of business in the letter book by a deceased clerk whose duty it was to copy letters into the letter book was held to raise a presumption that such copy was correct: see *Hagedom* v. *Reid*, 1813, 3 Campbell, 377; and *Pitt* v. *Fairclough*, 1812, 3 Campbell 305. Of course, a press or carbon or machine copy is never admissible either as a duplicate, original, or as a counterpart, it having come into existence always as a copy without the solemnities necessary for the creation of a duplicate, original, or counterpart, and accordingly it can never be admitted as primary evidence, but is always in the nature of secondary evidence, being excluded in law in favour of the original, on the ground that it is entitled to less weight, and also that the best available evidence is always necessary. Although every means of secondary proof may rightly be said to be comprehended in one legal category, it is essential that secondary evidence should be the best evidence available,

as was shown in a case where a copy of a copy writ, which copy writ had been examined with the original and found to be correct, was not allowed to be tendered in evidence by the person who made it, and who examined it with the examined copy, as the examined copy was in that case the best evidence then available: see *Everingham* v. *Roundell*, 1838, 2 M. & Rob. 138. See also on this point *Liebman* v. *Pocley*, 1816, 1 Starkie 167. I do not think there would be a presumption arising from the mere fact that a copy was a carbon copy that it was an exact copy of the original. Evidence would have to be given of its accuracy as a copy: see *Waldy* v. *Gray*, 1875, 20 Eq. Cases, 239.

M.

No Income in Year of Assessment.

FOLLOWING upon the decision of the Court of Appeal in *Grainger* v. *Maxwell and Others* (to which reference was made, *ante*, p. 254), to the effect that there could be no liability to tax under Sched. D. where the source of income has ceased in the year of assessment, comes a decision of the House of Lords on a somewhat similar point (*Whelan* v. *Hemming*, *Times*, 27th Jan., 1926). There can be no question that these decisions are of far-reaching importance. In *Whelan* v. *Hemming* the question to be determined was whether tax was payable under Case V of Sched. D. in respect of a holding of shares in a foreign company, where no dividend had been declared or paid for the year of assessment.

In that case H was the holder of a certain number of shares in a tea company incorporated in Ceylon. For the financial years ending on the 5th April, 1918, 1919, 1920, H had received the sum of £3,730, £2,629, £3,914 respectively, the average for the three years being £3,424. In 1920 the company made a small profit but no dividend was declared for that year, and H accordingly received no payment in respect of his holding. For the year ending 5th April, 1921, H was assessed to tax under Case V, Sched. D., upon the average of £3,424 for the three preceding years, notwithstanding that he had received no income from this source in the year in question. Rule 1 of the rules applicable to Case V of Sched. D. provides that "the tax in respect of income arising from stocks, shares . . . in any place out of the United Kingdom shall be computed on the full amount thereof on an average of three preceding years as directed by Case I."

Now, it has been already held by the House of Lords in *Brown* v. *National Provident Institution*, 1921, 2 A.C. 222, in a case arising under Case III of Sched. D (which deals with profits of an uncertain value and income from certain other sources, *cf.* r. 1 of Case III), that where no such profits or income had in fact accrued in the year of assessment, there was no liability to tax, notwithstanding that there had been such profit or income in the preceding year or years. The Crown, however, in *Whelan* v. *Hemming*, sought to distinguish *Brown's Case*, and relied on the fact that in the latter case there was no continuing source of income, as there was in the former. One might with advantage refer to some of the dicta in *Brown's Case*, in order to ascertain the true principle on which that case was decided. There Lord ATKINSON, after referring to the previous Income Tax Acts, states (1921, 2 A.C., at p. 246) "From this legislation one sees clearly what was the true nature of income tax. It was a single tax divided into different parts merely for the convenience of collection. It was a tax assessed, levied and collected yearly on the profits and gains arising and accruing during the year in which it was collected from one or more of the sources named. If that be so, as in my opinion it clearly is, it necessarily follows that if in the year of assessment a source of income should dry up and no income accrue, then no tax could be levied or collected in respect of a non-existing income." And Lord HALDANE says (*ib.*, at p. 236), "It is no doubt true that the result of applying the general principle that continuation into the year of assessment is the foundation of the tax, coupled with that of retrospective measurement, will be that if there is only a very small amount of profit in the year of assessment, the tax-payer may have to pay on a larger amount received in the past. It is also true that if he can be assessed only on any profits made in the previous year, standing alone, and there is no such previous year, inasmuch as he has only begun to earn profits in the year of assessment, he escapes duty. And yet, if he ceases to earn profits after the latter year he will escape, because in the next or third year of assessment he has earned none. I express no opinion as to whether, such a case occurring in the second year, the tax-payer could be reached under Case VI . . . It seems to me that the true meaning of the words the Legislature has used, is that the tax is intended as matter of basic principle to be on profits and gains forming income in the year of assessment though not measured by the income of that year."

It would appear that the *ratio decidendi* of *Brown's Case* is to be found in the above passage from the judgment of Viscount HALDANE, and this was the view taken by the House of Lords itself in *Whelan* v. *Hemming*. The House accordingly held in the latter case that the fact that there was a continuing and potential source of income did not create liability to tax under, at any rate, Case V (and, *semble*, Case III) of Sched. D, where there was in fact no income in the year of assessment. The House, however, expressed no opinion as to what would be the position in similar circumstances, of a case arising under Case I of Sched. D.

Will-Making in 1926.

SPEAKING generally, the Law of Property Act, 1925, and its linked legislation has left testators with almost exactly the same rights as previously, and one or two minor ones superadded, e.g., the power to dispose of an entail conferred by s. 176 of the L.P.A., 1925, and to make a will in contemplation of, and irrevocable by, a particular marriage; see s. 177. The right is even preserved of allowing a testator to nominate a sole executor and to give him power to sell land and receive the proceeds, though a sole individual trustee of a will cannot, as such, give a receipt for the proceeds of sale of land if he holds on trust for sale; see T.A., 1925, s. 14 (2) (*a*), and S.L.A., ss. 18 (1) (*c*), 94 (1); nor can trustees exercise a power of sale over settled land, for the power is automatically transferred to the tenant for life by s. 108 (2) of the S.L.A., 1925.

Thus, generally speaking, a will drawn to take effect under the pre-1926 law, will operate as desired under the post-1925 conditions. Nevertheless, the draftsman who values his standard of work cannot remain content with his former precedents. And the first decision he will have to make when he receives a testator's instructions is as to whether he shall fill in his own canvas, so to speak, or, taking the background of intestacy, paint in a scheme of variations to carry out the intention. Then, in either case, there will be the further question whether he shall rely on statutory provisions, such as those of the T.A., 1925, ss. 31-33, or the Lord Chancellor's statutory will forms issued under s. 179 of the L.P.A., 1925, or whether the will shall, so far as possible, be self-contained. For, by skilful reference, a will may now be almost as brief as Lord BURLEIGH's nod, and as pregnant of meaning.

On the latter question the client's own wishes will, of course, be consulted. His adviser may say to him; "I can make a short will exactly carrying out your wishes, but which you certainly will not be able to understand on the face of it, or I can draw a much longer self-contained document for you to follow." If the testator has a decided preference it should, of course, be observed, but if he is indifferent, the briefer document may be regarded as the more elegant, just as the words "as beneficial owner" are preferable to the pre-1882 covenants for title.

The problem, whether to build up a will or to adopt the rules on intestacy, has not hitherto been important, for the combination of the old statutes of distribution with the law of inheritance seldom made a workable base for a testator's intentions. About twenty years ago a millionaire converted his property and bequeathed legacies to the value of a few hundred pounds, in deliberate reliance on the statutes for the residue, but his case was exceptional.

Hereafter a large number of testators may be content with slight variations of the new distribution on intestacy, especially married men with wives and families, and in their cases the simplest and best plan will be to build on such variations. The one collection of precedents which has been published contains models on both lines, but most are on the older system. Intestacy is now so carefully worked out that reliance on the A.E.A., 1925, is certainly likely to tend to shorter wills. It might even be suggested that some such form as "I wish my property to go as if I had died intestate and X was my wife and her children were my children, the class to be ascertained at her death," would be a concise and workable referential trust for a gift of residue to a woman and her children. But we do not recommend the adoption in practice of such a suggestion. Again, it would be quite easy by a referential trust to give a widow with children a life interest in the whole residue instead of one-half (which is probably more often desired), or to limit her interest or any particular proportion of it to widowhood. With these variants, and one or two personal legacies to executors and others, and a charging clause if desired, a large number of wills could be drawn in a few lines.

The vetoes on a greater number of trustees or executors than four, contained in the T.A., 1925, s. 34, and the Judicature Act, 1923, s. 160, respectively, must be kept in mind, but a sensible testator will hardly quarrel with them. For the purposes of will making, the novel feature of an estate now comprising land held by the testator as tenant for life only may perhaps be disregarded, for s. 22 of the A.E.A., 1925, provides that, in default of express appointment otherwise, the trustees of the settlement shall be the special executors of the settled land.

Testators who leave businesses as going concerns will continue to require very carefully drawn wills, and the power to turn a business into a limited company is likely to remain useful unless it is a small one or is the subject of partnership articles. The new power to create an equitable estate tail in leaseholds and other personal property may sometimes usefully be applied. Section 130 (2) of the L.P.A., 1925, must be remembered in the creation of an entail, for in effect, it enacts that in future technical language will be required for this purpose.

Another provision to be noted is s. 35 of the A.E.A., 1925, extending the principle of Locke King's Act, to all property, whether real or personal. If a testator leaves specific legacies of various securities and any of them happen to be pledged to a bank for an overdraft, the above section may partially defeat his intention unless the contrary is clearly expressed.

Testators with landed estates who wish them to be settled will, in future, have to elect between the trust for sale given to trustees operating under ss. 23-33 of the L.P.A., 1925, or a settlement under the S.L.A., 1925. Both systems are elastic, and the choice may ultimately depend on whether the testator has reliance on the business ability of those he makes tenants for life. If he has, the S.L.A. is indicated, but in other cases he can virtually create the same trusts and repose them in the trustees, by a trust for sale, and the trustees, in their turn, may delegate powers to the tenant for life under s. 29 of the L.P.A., 1925.

Whether the will, which is complete in itself, or the syncopated referential will taking effect by virtue of statute and statutory forms, will be the most popular, remains to be seen, but professional caution will, no doubt, tend to the former.

It should be borne in mind that the new law will govern wills already drawn where the testator's death takes place after 1st January last. Legal advisers should therefore draw their clients' attention to any alterations that may be deemed necessary, *e.g.*, to put right cases where the law has been altered by the extension of the principle in Locke King's Acts, or where an estate tail may be disposed of.

In most cases the necessary alterations can be effected by means of a short codicil.

A Conveyancer's Diary.

General Conditions of 1925.

There appears to be a general misconception as to the nature and purpose of the General Conditions of 1925, issued by The Law Society. It is interesting to note that they were first drawn up with a view to adoption by the Lord Chancellor, under s. 46 of the Law of Property Act. There were objections to this proposal. When, therefore, they were not adopted by the Lord Chancellor they were taken up by The Law Society with two objects in view, namely: (1) to secure as far as possible the general adoption of a uniform set of conditions of sale; and (ii) to shorten the form of contracts for the sale of land.

It is of course perfectly clear that whenever land is agreed to be sold in accordance with the General Conditions of 1925, such conditions need not and are not intended to be printed in full in the conditions of sale. What is intended is that the parties shall contract to sell generally subject to the conditions as va ied by special conditions; thus, all that the practitioner has to do is to prepare short special conditions for covering any matter not within the General Conditions. Of course, a vendor must see that a purchaser has a copy of the latter. Thus, if the sale is by private treaty the vendor may give the purchaser a copy of the General Conditions on which have been written the special conditions (if any), or if the sale is of a number of properties by auction, only the special conditions need be specially printed, it being announced that the sale is made subject to the General Conditions of 1925 as modified by the printed special conditions, and that a copy of the General Conditions may be obtained from the auctioneer on application.

No one sets out in full on the sale of land the covenants implied by the words as "beneficial owner," "trustee" or "mortgagee," but by merely using the magic expressions "as beneficial owner," "as trustee," "as mortgagee," there are incorporated in a conveyance the appropriate covenants implied by statute. The idea underlying the General Conditions is the same. There is no need for the parties to go through these conditions and select and specially adopt those which are likely to apply to the particular sale with which they are concerned.

The General Conditions have been framed with a view to providing the machinery requisite for carrying through and facilitating transactions in every part of the country, and of almost every conceivable interest in land. It is obvious that if these conditions are generally adopted, they will become so well known that it will seldom be necessary for the parties to refer to them to ascertain what the prescribed practice is. To insert general conditions of this nature in an Act of Parliament would necessarily hamper the making of amendments from time to time as occasions arise. We may no doubt look forward to new editions being published when need therefor is shown. The point that is now material is that uniformity and convenience will flow naturally from the widespread adoption of the General Conditions of 1925.

Landlord and Tenant Notebook.

Assignee of Reversion and Breach of Covenant.

According to s. 10 (1) of the Conveyancing Act, 1881 (now reproduced in s. 141 of the Law of Property Act, 1925), "rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary estate in the land or any part thereof immediately expectant on the term granted by the lease . . ." Although the expression "lease" appears in s. 10, yet that term will equally cover an agreement for a lease, even though the term thereby created is for more than three years (*cf.*, *Rickett* v. *Green*, 1910, 1 K.B. 253, per Darling, J., as he then was, at p. 259). Section 10, however, will not apply unless the lease is in writing, so that there must be a written lease or agreement. This point was decided in *Blane* v. *Francis*, 1917, 1 K.B. 252. There a lease contained, *inter alia*, a covenant to repair by the tenant. The lease expired, and the tenant held over after the expiration of the term, as tenant from year to year, upon the terms of the expired lease, so far as they were applicable. No document, however, being signed. The reversion was subsequently assigned, and the assignee of the reversion sought to make the tenant liable for breaches of covenant to repair. The Court of Appeal held that the tenant was not liable to the assignee, since there was no written document, and they further held that the assignee was not entitled to compel the lessee to execute a lease so as to enable the assignee to sue upon the covenant. It should be further noted that the question was expressly left open in that case as to whether the covenant to yield up in repair at the end of the term was applicable to the yearly tenancy, although it has been held, in *Cole* v. *Kelly*, 1920, 2 K.B. 106, that such a covenant would be implied, at any rate, in a new agreement in writing executed by the tenant who continued in occupation, provided that such agreement contained nothing inconsistent with the inclusion of the term therein: see per Bankes, L.J., *ib.*, at pp. 125-127; *cf.*, also *Wedd* v. *Porter*, 1916, 2 K.B. 98.

The case of *Cole* v. *Kelly* is of further importance, inasmuch as it raises the question whether the assignee of the reversion can take advantage of such an implied condition where the lessee, who has continued in occupation, has held over under a written agreement which contains no reference to such a covenant. On this point, reference may be usefully made to the judgment of Bankes, L.J., in *Cole* v. *Kelly*, *supra*, at p. 127: "It was decided by this court," said the learned Lord Justice, "in *Blane* v. *Francis*, that the expression 'lease' in s. 10, means an instrument in writing. In the present case there was an agreement in writing, and to that extent the requirements of the section are complied with. Is it true to say that the implied term as to repairs is 'contained' in the agreement in writing in the letter? In my opinion it is. All the terms of the written agreement, whether express or implied, are 'contained' in the written agreement, the terms implied being such as the parties must have intended should be included in it."

In this case the agreement was not only written, but was also signed by both parties. In *Pye* v. *Purcell*, 70 Sol. J. 345, however, McCardie, J., had to consider whether s. 10 of the Conveyancing Act gave the assignee of the reversion any right to sue the tenant for breach of covenant, where the written document, under which the tenant continued in possession, was signed by the landlord only. The learned judge held in this case that such a document constituted a sufficient agreement in writing for the purpose of s. 10 of the Conveyancing Act, 1881, and that the assignee was accordingly entitled to sue the tenant for breach of covenant, which, in the case in question, was a repairing covenant.

LAW OF PROPERTY ACTS.

Points in Practice.

In this column questions from Annual Subscribers are invited and will be answered by an eminent Conveyancer. All questions should be addressed to—The Assistant Editor and Manager, "The Solicitors' Journal," 94-97, Fetter Lane, E.C.4. The name and address of the Subscriber must accompany all communications, which should be typewritten (or written) on one side of the paper only, and be in triplicate.

Settled Land.—Trustees of Settlement.—Powers.

132. *Q.* A testator died on the 2nd July, 1907, having by his will (dated the previous day) devised his real estate to three trustees (one of whom was his wife) upon trust for his wife for life, she to keep the same in repair and insured against fire, and after her death he directed his trustees to stand possessed of the same upon trust for A absolutely. The will did not contain either a trust for or a power of sale and did not appoint the trustees trustees for the purposes of the S.L.A. The testator having omitted to appoint an executor, the wife obtained letters of administration with the will annexed. All death duties payable on the death of the testator and debts have long ago been paid, and the administratrix on the 7th October, 1907, executed an assent to the devise in favour of the trustees: (1) Should the wife (as the legal personal representative) appoint her two co-trustees to act with her as the trustees of the settlement created by the will (s. 30 (3) of the S.L.A.)? Is it necessary that she should appoint herself a trustee or does she become or remain a trustee automatically? (2) After the appointment should the three trustees execute a vesting instrument in favour of the wife as tenant for life, 2nd Sched., S.L.A.? (3) The tenant for life will then have power to sell and to grant long leases. Can she exercise these powers against the wishes or to the serious detriment of the remainderman? The tenant for life is over seventy and the remainderman much younger. The power of sale was intentionally omitted from the will the testator desiring that the remainderman should take the property in kind. (4) Have the three present trustees no status or power?

A. (1) The sub-section requires her to appoint at least one trustee with herself, but she can appoint two if she likes, see ss. 64 (1) and 36 (6) and 37 (1) (*a*) of the T.A., 1925. It would be for her to consider whether her co-trustees of the will were the best persons to act with her. Section 30 (3) of the S.L.A., 1925, clearly makes her trustee so she has no need to appoint herself. An alternative, if desired, would be for the widow and A to appoint under s. 30 (1) (v) of the Act. If this course was taken, and the widow wished to act, she would have to appoint herself, which she could do under the T.A., 1925, s. 36 (1). (2) Yes. (3) In exercising her powers as tenant for life under the S.L.A., 1925, the widow is deemed to do so as trustee for all persons interested, see s. 107 (1) of the S.L.A., 1925, re-enacting s. 53 of the S.L.A., 1882. Thus if she exercises the powers unfairly a court can deal with her as it does in the case of any other trustee misapplying his powers. A number of cases under s. 53 are cited in the text-books, and they show how the duty is interpreted. (4) *Quâ* the realty and leaseholds settled by the testator's will, and still held, it would appear practically none, for such powers as they may have had are now exercisable by the tenant for life, see S.L.A., 1925, s. 108 (2).

Undivided Shares.—Power to Mortgage.

133. *Q.* In 1925 A and B bought Blackacre, which was conveyed to them as joint tenants. By virtue of s. 36 of the L.P.A., 1925, A and B now hold Blackacre on trust for sale "in the like manner as if they were tenants in common" *i.e.*, they hold on the statutory trusts. A and B wish to raise money by way of mortgage on Blackacre. By s. 28 of the L.P.A., 1925, "trustees for sale have all the powers

of a tenant for life and the trustees of a settlement under the S.L.A., 1925. A and B cannot bring themselves within any of the reasons given in s. 71 of the S.L.A.

(1) Can A and B mortgage under s. 16, T.A., 1925 ?

(2) If not (and if they have no other power to mortgage) would a mortgagee be safe in relying on s. 17 of the T.A., 1925, and in granting a mortgage to A and B when he must know that they have no power to mortgage ?

(3) If the mortgagee could not rely on s. 17, T.A., what should A and B do in order to give themselves a power to mortgage ?

A. Whether under s. 36 or s. 39 (4) and Pt. IV, para. 1 (2) of the L.P.A., 1925, A and B hold on the statutory trusts. The difficulty of picking the power to mortgage out of the Acts is appreciated, but the general consensus of opinion is that it is there (and if it is not, it certainly ought to be). A precedent of mortgages by co-owners will be found in the collections recently published. For one such collection s. 16 of the T.A., 1925 and s. 28 (1) of the L.P.A., 1925, are called in aid in the footnote as suggested above. In the other, reliance is placed on s. 3 (1) (*b*) (ii) of the L.P.A., 1925. Another possible method would be by formal partition under s. 28 (3) with an equitable agreement that, as between the parties, the *status quo* should be maintained. The partition would of course, enable each partner to mortgage his allotted portion for the whole or any apportioned sum borrowed. No doubt s. 17 of the T.A., 1925, would protect a mortgagee if there was in fact a trust or power to mortgage, but he would have to make sure that there was such a trust or power.

UNDIVIDED SHARES.—EXISTING CONTRACT FOR SALE.

134. *Q.* In 1925 A contracted to purchase certain leasehold property in London from X and Y. The contract stipulated that the purchase money should be paid by instalments, and that completion should take place on payment of the last instalment completing the whole sum due. The title has been examined and approved, and the first instalment paid. On 1st January, 1926, owing to the operation of Pt. IV, para. 1, sub-para. (4) of the 1st Sched. to the L.P.A., 1925, the legal estate will no longer be in X and Y, and before anybody is in a position to convey the legal estate to A, there will have to be an appointment of trustees, and, presumably, a vesting deed

On whom does the expense of the appointment and vesting deed fall ? Is it impliedly thrown on the vendors by s. 42 (2) ?

To what costs will the purchaser's solicitors be entitled for examining and approving a second title to the same property ?

A. If X and Y hold in undivided shares, which would appear to be so from the reference above, the questioner has overlooked the saving in the L.P.A., 1925, 1st Sched., Pt. IV, 1 (10), in respect of land subject to an existing contract for sale. Even without this, however, the case would appear to come under para. 1 (2) rather than para. 1 (4) of Pt. IV, and X and Y could make title as trustees for sale.

If X is tenant for life and Y reversioner the case falls within the L.P.A., 1925, 1st Sched., Pt. II, para. 7 (j), and the land is settled land within the S.L.A., 1925. There will then have to be a vesting deed at the cost of the trust estate, see S.L.A., 1925, 2nd Sched., para. 1 (2) and s. 13.

In such a case the cost of preparation and execution of the deed of appointment (if any) of S.L.A. trustees and of the vesting deed would fall on the vendor : s. 42 (2). The examination of these deeds and general re-approval of the title would apparently be covered by the purchaser's solicitors' scale fee unless there was a bargain otherwise.

RESTRICTIVE COVENANTS—ORIGINAL COVENANTEE'S POSITION.

135. *Q.* A, in February, 1926, contracts to sell a plot of his land to B, and it is agreed that B shall enter into a covenant restrictive of the user of the land. In March, 1926, the matter is completed, and B enters into a covenant in accordance with the contract. In April, 1926, B sells the land to C. A does not register the covenant under the L.C.A., 1925.

(1) Prior to B's selling to C, can A enforce the covenant against B ?

(2) After B has conveyed to C, can A enforce the covenant against B ?

(3) Assuming B has disclosed the covenant to C in his contract, can B insist upon C giving him an indemnity against his covenant ?

(4) If B cannot insist on an indemnity from C, what steps should B take to protect himself ? And can he force A to register ?

The answers to the above questions seem to turn upon the construction placed upon the words, " a purchaser of the land charged therewith " appearing in the L.C.A., 1925, s. 13 (2). As between A and B it would appear that B is not included in the words quoted. If so, B remains liable on the covenant although C, if no indemnity be given by him, takes free from it. It may be said that B cannot insist upon an indemnity from C because although B remains liable to A, C has no notice at law of the restrictions (see *Re Poole & Clarke's Contract*, and L.P.A., 1925, s. 199).

If the words quoted do include B, how can the restrictions be registered as a land charge prior to the completion of the sale from A to B ?

If B is entitled to an indemnity from C, which he can enforce, it would appear that the practical necessity for registration of restrictions as land charges is nil.

A. (1) B is, of course, bound by his own restrictive covenants, whether registered or otherwise, just as he would be bound by a positive covenant, say to build a house, though this would not even be registrable.

(2) Clearly, A cannot specifically enforce the covenant against B, after the latter has parted with the land. As to damages against B for C's breach, this will depend on the form of the covenant, but, unless a contrary intention is expressed, s. 79 of the L.P.A., 1925 will apply, and B will be liable.

(3) There is nothing in the new Acts to alter the law laid down in *Re Poole and Clarke's Contract*, 1904, 2 Ch. 173, as explained in *Harris* v. *Boots*, *ibid*, 376, see especially p. 382. But the indemnity should be given on conveyance, otherwise it might be taken to be waived. See also No. 31 of the Law Society's General Conditions.

(4) If A did not choose to register his covenant he would have been guilty of laches which would probably affect his right to sue B for damages, for, by relaxing his rights against C, he would in any case be putting B to needless expense and trouble. As to the need for registration, B might disappear or become bankrupt, in which case A, if he had saved the expense of registration, would find his covenant worthless.

UNDIVIDED SHARES—HUSBAND AND WIFE.

136. *Q.* A and B, husband and wife, are seised as joint tenants prior to 1st January, 1926. Is it not necessary to appoint new trustees now to hold the legal estate, and, if so, may A and B themselves be appointed trustees ?

A. By the L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (2), and s. 35, the husband and wife became trustees for sale on 1st January, and this would have been so if they had been tenants by entireties : see Pt. VI of the schedule. Under s. 36 of the T.A., 1925, persons having power to appoint trustees may appoint themselves.

HUSBAND AND WIFE—PURCHASE OF HOUSE.

137. *Q.* C and D, husband and wife, desire to purchase a house after 31st December, 1925. What is the proper form the conveyance should take ? Will it be necessary at the same time as the conveyance to appoint trustees ? C and D would mortgage to a building society. Can this be

done without any appointment of trustees? If not, would the trustees have to join in the mortgage along with C and D?

A. On a conveyance to C and D they would, *ipso facto*, become trustees for sale, see ss. 34 (2) and 35 of the L.P.A., 1925. As to future mortgages by co-owners, some little difficulty may be felt, since they are trustees for sale, with, it is true, the wide powers both of trustees and tenants for life under the S.L.A., 1925, but not unlimited statutory power to mortgage. However, s. 16 of the T.A., 1925, may perhaps be prayed in aid, and see also s. 3 (1) (*b*) (ii) of the L.P.A., 1925. And there is no reason why they should not mortgage as beneficial owners. Precedents of mortgages on partnership and other property held equitably in undivided shares will be found in the new editions of the various collections.

RESTRICTIVE COVENANTS—REGISTRATION.

138. *Q.* What will be the procedure for registration of restrictive covenants as land charges in respect of building land which is sold in plots? Will the registration of the covenants by the first purchaser be sufficient for the whole estate, or can a vendor in some way register the restrictions which he imposes upon the land in question?

A. See answer to *Q.* 52, p. 170, *supra*, especially (B). A covenant must bind a covenantee in respect of a particular parcel of land before it can be registered Therefore covenants can only be registered (against the name of the covenantee being estate owner, see L.C.A., s. 10 (2)) when made.

UNDIVIDED SHARES—SETTLED LAND.

139. *Q.* In order to ascertain whether settled land can be dealt with under the statutory trusts or under a vesting deed, it will be necessary to ascertain who are entitled to the income: (1) If the whole of the land prior to 1st January is vested in trustees, whether settled land or not, and the income is payable to beneficiaries in undivided shares: L.P.A., 1925, 1st Sched., Pt. IV, paras. 1 (1) and (3); (2) Or if, after 1st January settled land is held in trust for persons entitled in possession to undivided shares—the statutory trusts apply and a vesting deed is wrong. If two or more persons of full age are beneficially entitled for life to settled land as joint tenants they together constitute the tenant for life, S.L.A., s. 19 (2). In every case, therefore, it appears to be necessary to ascertain under any trust whether the beneficiaries are entitled in undivided shares and also whether as tenants in common or joint tenants before it can be determined how the property can be dealt with. If the correct method is under the statutory trusts, what will be the effect of acting under a vesting deed and vice versa?

A. In case (1) above, the trustees hold under the statutory trusts of L.P.A., 1925, s. 35. Case (2) is governed by s. 36 of the S.L.A., 1925, the statutory trusts being those of s-s. (6). Joint tenancy and tenancy in common are both subject to the provisions applicable to undivided shares, see answer to *Q.* 84, p. 260, *supra*. If property held by trustees on the statutory trusts is conveyed by the persons entitled in undivided shares the grantee will have an equity which *quâ* the land can be overridden on sale by the trustees. And trustees have no title to property held by a sole tenant for life, and cannot convey it.

RESTRICTIVE COVENANTS—PRE-1926—NOTICE TO LESSEE.

140. Q. In 1920 A conveyed Blackacre to B, subject to restrictive covenants. In 1921 B grants a lease to C without mentioning the restrictive covenants and not including them in the covenants inserted in the lease. In 1926 C contracts to and does assign his lease to X. X unwittingly breaks the restrictive covenants. It is presumed that A cannot enforce the restrictive covenants by an injunction against X because of s. 44 (5) of the L.P.A., 1925. And further, that A could not fix X with actual notice, because he could not register the covenants as they were entered into prior to 1926. Is this so?

A. Yes. The sub-section quoted negatives *Patman* v. *Harland*, 1881, 17 C.D. 353, and X is (and C, for that matter, would be) a purchaser for value without notice within the L.P.A., 1925, ss. 2 (5) (*a*) and 205 (1) (xxi). A, of course, has his full remedy in damages against B, whose carelessness in failing to bind C has led to the breach.

MORTGAGE—CESSER OF RIGHT OF REDEMPTION.

141. *Q.* With reference to the difficulty mentioned by Sir Benjamin Cherry on p. 152, vol. 70, SOL. J., 28th November, 1925, as to knowing when the legal right of redemption ceases in a charge by way of legal mortgage, how can this difficulty be rectified? Can you suggest any form of words which would set this matter right?

A. The actual right of redemption of freeholds appears only to be lost or destroyed under s. 88 of the L.P.A., 1925, s. 88 (2) abolishing the very inconvenient doctrine of *Campbell* v. *Holyland*, 1877, 7 C.D. 166, that a mortgagor has an indefinite right of redemption after foreclosure absolute. If the covenant No. 1 in Form No. 1 of the 5th Sched. to the L.P.A., 1925, is drafted in accordance with that contained in s. 117 (2), the data is supplied. The law and practice as to notice to pay off (see "Fisher on Mortgages," 6th ed., paras. 1499, 1500, pp 760-1) will continue to apply in ordinary cases.

UNDIVIDED SHARES—POWER TO MORTGAGE.

142. *Q.* On 1st January, 1926, beneficial joint tenants (and tenants in common) automatically become trustees for sale, but they appear to have no general power to mortgage. They can mortgage their beneficial interests and even hand over the deeds, but what is the position of the mortgagee when exercising his power of sale? It would appear that he cannot pass the legal estate. The only way out of the difficulty would seem to be for the mortgagees to be appointed new trustees, and if there is only one mortgagee it will be necessary for a second trustee to be appointed to act with him.

A. The questioner will find precedents of legal mortgages by beneficial co-owners and by trustees for sale at their request in some of the collections recently issued. In one precedent s. 16 of the T.A., 1925, is called in aid, and in another s. 3 (1) (*b*) (ii) of the L.P.A., 1925. Another possible device might be to partition under s 28 (3) of the L.P.A., 1925, and then for each owner to mortgage his portion for the whole amount, the mortgagee leaving the owners to work out their equities between themselves. It is to be noted that a mortgagee is a "purchaser" within the L.P.A., 1925, see s. 205 (1) (xxi). The trustees for sale could, no doubt, mortgage their interests by the direction of the persons, *sui juris*, beneficially entitled; see answers to Questions 133, 137, *supra*.

MORTGAGE OF PART OF LEASEHOLD—NO LEGAL APPORTIONMENT—POWERS OF MORTGAGEE.

143. *Q.* With reference to question 9 on p. 223, *supra*, would not the head term which D could not convey become a satisfied term within s. 5 (2) of the L.P.A., 1925, or vest in a purchaser from D by force of s. 116 of the same Act?

If this is so, what is the object of inserting the irrevocable power of attorney in the mortgage?

[The question was: If A had demised four houses to B, and B sold one of the houses to C for the remainder of the term, or, as between B and C, the rents were split up and the usual cross-covenants were entered into, but no legal apportionment was made, and then C had mortgaged to D by demise for the whole term less ten days, would the mortgagee be able to convey the head term? *Answer:* Independently of the mortgage provisions D can only convey the sub-term.]

A. D can only sell under his power of sale to which s. 89 of the L.P.A., applies. In the ordinary case it is provided that the sale (except by leave of a court), comprises the whole leasehold reversion, and the sub-term ceases, see s-s. (1); but the above case is excepted by s-s. (6). No doubt if the mortgagee had power through the mortgage provisions to convey the whole term s. 5 (2) would apply, but otherwise D can only convey what he has. The irrevocable power of

attorney is, of course, a usual provision in a mortgage by sub-demise, but it may be against the purchaser's advantage to avail himself of it, see K. & E., 11th ed., vol. II, p. 90, note (*a*).

MORTGAGE—PRE-1926 EQUITABLE CHARGE—REGISTRATION.

141. *Q.* A client holds a number of equitable charges dated prior to 1926 in the following approximate form "I hereby charge all my estate or interest at —— to you to secure £——, subject to prior mortgage or prior charge." Notice has been given to the prior mortgagees or trustees concerned. Should such charges be registered under the L.C.A., 1925, or is the holder of the same protected by the notice which he has given?

A. See answer to question 110, p. 320, *supra*, in which the opinion was given that, having regard to the exclusion of mere equitable charges not secured by the deposit of documents from the L.C.A., 1925, s. 10 (7), such a charge as that set forth above is not registrable under the Act. As to the utility of the notice, the case of *Corbett* v. *National Provident Institution*, 1900, 17 T.L.R. 5, and the older case of *Philips* v. *Robinson*, 1827, 4 Bing. 106, may be considered in conjunction with the L.P.A., 1925, ss. 96 (2) and 115 (1). The effect of the two cases was that the title deeds should be held by the person best entitled to the legal estate, and, on the same principle, it would seem that the first of the puisne mortgagees would have a better right to them under the new law, than the mortgagor. But a mere chargee without conveyance is not entitled to a legal estate, and, if this is so, the mortgagor would have the best right to the title deeds under s. 96 (2). Thus the client's security appears to be precarious under the new law, and he would be well advised to insist on payment off or better security.

MORTGAGE—EQUITABLE CHARGE—YORKSHIRE.

145. *Q.* Is it necessary to register equitable charges dated subsequent to 31st December, 1925, which affect land within the jurisdiction of the Yorkshire Registries, both under the old Yorkshire provisions and under the L.C.A., 1925?

A. No, see L.C.A., s. 10 (6), and the Yorkshire Registry Act, 1884, ss. 4 and 3 (definition of "assurance," from which it appears that a memorandum of charge is registrable).

Correspondence.

Landlord and Tenant Notebook.

Sir,—You were good enough to publish (though over wrong initials) in your issue of the 26th ult. my letter dealing with the view expressed by "S" in a previous number as to the right of a statutory tenant to sublet. I should not trespass further on your valuable space were it not that, in my opinion, the note of "S" at the end of my letter is most misleading.

His suggestion that I am begging the question only confuses the issue, and is, I submit, erroneous, and as regards the distinction referred to by him between a "contractual" and "statutory" tenant, I would refer "S" to his original contention which dealt only with a "statutory" tenant, his words being "the statutory tenant cannot sublet, it being immaterial whether the subletting is of the whole or only part of the premises." I did not therefore consider it necessary to deal with the case of a "contractual" tenant.

In my letter I maintained and still maintain that the exposition of the law given by "S" is wrong. If a statutory tenant sublets only part of the premises, retaining the remainder, an order for possession cannot be made against him as he is protected by s. 4 (1) (*h*) of the 1923 Act. He would similarly be protected if he had sublet the whole prior to the 31st July, 1923, and I entirely dissent from the contention of "S" that "the principle of *Keeves* v. *Dean* applies as much to the statutory tenant now as it did prior to the passing of the 1923 Act."

To test my view, let us assume that a landlord takes proceedings now against his tenant for possession of a three-floored house, two floors of which were sublet either before or after the 31st July, 1923, the remaining floor being retained. The court would be bound to consider the section I have mentioned and would have to say that the tenant, not having assigned or sublet the whole of the dwelling-house or sublet part of the dwelling-house, the remainder being already sublet, the words at the commencement of the section, "No order or judgment for the recovery of possession of any dwelling-house to which this Act applies, or for the ejectment of a tenant therefrom shall be made or given unless" must give the tenant the right to remain. REGINALD G. DAVIS.

11th January.

SPECIALLY ENDORSED WRIT BY FOREIGN PLAINTIFF RESIDENT OUT OF THE JURISDICTION, FOLLOWED BY APPLICATION FOR SECURITY FOR COSTS. POSITION OF DEFENDANT AS TO DELIVERY OF DEFENCE.

Sir,—A specially endorsed writ is issued and served by a foreign plaintiff, resident out of the United Kingdom, on 1st January. In accordance with the note endorsed on the writ, the appearance would be due on the 18th, and provided the plaintiff does not proceed with a summons for directions or for judgment, the defendant should file his defence on the 18th.

On the 8th, the defendant enters an appearance, and at the same time issues a summons for security and stay of proceedings (the usual form). The summons is made returnable on the 19th, on which date the usual order was made.

The plaintiff complies with this order on the 22nd and does no more.

On what date is the defence due?

Does the summons to stay create a stay of the proceedings until the date fixed for hearing, or could the plaintiff have signed judgment in default of defence before the summons had been heard, or, in the alternative, simultaneously with his complying with order for security.

Or is the order retrospective to the date of the issue of the summons so as to give the defendant ten days from the day on which the plaintiff complies with the order irrespective of the date on which his defence was ordinarily due?

PERPLEXED.

[Where a plaintiff resident out of the jurisdiction issues and serves a specially endorsed writ, under Ord. 3, r. 6, on the defendant, and does not follow it up with either a summons for judgment under Ord. 14, or a summons for directions, the defendant must deliver a defence within ten days from the time limited for appearance if he wishes to avoid the possibility of judgment being entered against him (see Ord. 21, r. 6). The fact that the defendant issues at the earliest possible moment a summons for security for costs, and for a stay of proceedings pending the giving of such security, does not affect the obligation of the defendant to deliver his defence if he wishes to avoid judgment being signed against him by the plaintiff. The issue of the summons for security and to stay proceedings in the action does not have any effect upon the defendant's obligation to deliver his defence. Such issue of the summons does not create any stay of proceedings in the action, and after the defendant's time for delivery of his defence had expired, the plaintiff could technically have signed judgment in default of defence against him, regardless of the fact that a summons to stay and for security for costs was actually pending. On the plaintiff complying with the order for security the stay would be automatically removed, and he could then again sign judgment if he so desired. The order for security is certainly not retrospective to the time when the summons was issued. The defendant, who did not deliver his defence in the ordinary course, should immediately deliver a defence now.—ED., *Sol. J.*]

Restrictive Covenants.

Sir,—The question of restrictive covenants dealt with under the appropriate heading of "Current Topics" in your issue of the 9th inst., is most assuredly one of great importance in practice at the moment, but is there not a prevailing misinterpretation of s. 13 (2) of the Land Charges Act, 1925? Restrictive covenants are void as against a purchaser unless registered as a land charge "before the completion of the purchase." In construing the words quoted, is not the purchaser, whom it is intended to bind by registering the land charge, the purchaser from the person who originally enters into the covenants? The latter is sufficiently bound by his own covenant as you have already pointed out. If this is so, is it correct to include a mortgagee in this class of purchaser, and what authority is there for saying that restrictive covenants must be registered as a land charge "before the mortgage deed is delivered to the mortgagee"? Surely, a mortgagee cannot be deemed a purchaser in this sense unless and until he either (A) obtains a foreclosure order absolute; or (B) exercises his statutory power of sale. Pending either of these eventualities he merely has a term and cannot meddle with the fee; and if he goes into possession, he is in a fiduciary capacity and no nearer being a purchaser. Provided that the land charge is registered as soon as practicable after the completion of the conveyance imposing the covenants, there would appear to be no danger of the covenants being *non est*, because some months must elapse before the mortgagee can go into possession, or his power of sale could arise, and much longer still before he could become an estate owner under a foreclosure order absolute. Is it not upon the happening of any of these events, and not until then, that a mortgagee could acquire an estate constituting him a purchaser or estate owner to be bound by the covenants? But the land charge by then would have been registered.

MILLS, LOCKYER & CO.

13th January.

[The mortgagee in the circumstances contemplated is a "purchaser" from the original purchaser: see definition of purchaser as including a mortgagee, L.C.A., 1925, s. 20 (8). The original vendor will be anxious to make certain that everyone, including his purchaser's mortgagee or lessee, will be bound by the restrictive covenant. Further if the land charge is not registered before completion what is there to prevent the mortgagor and mortgagee acting together from selling immediately after completion of the original transaction and in this way defeat the restrictive covenant? Notice of such a covenant will not avail if there has been no registration of a land charge.—ED., *Sol. J.*]

Land Registration Act, 1925.

Sir,—There is a provision in s. 110 of the Land Registration Act, 1925, and which is of importance to purchasers and their Solicitors, to which we should like to call the attention of your readers namely, that where the purchase money on a sale or other disposition of registered land to a purchaser other than a Lessee or Chargee, does not exceed £1,000, the costs of supplying an abstract of title is thrown on the purchaser in the absence of any stipulation to the contrary.

This is a reversal of the previous practice and in our opinion is most unfair and we suggest that Solicitors acting for purchasers in future should bear this point in mind and in all cases where the purchase money does not exceed £1,000 should ascertain before contract signed whether the title to the property is registered and if it is, that they should see that a clause is inserted in the contract providing that the vendor shall supply a proper abstract of title at his own expense.

HUBBARD, SON & EVE.

London.
1st February.

Joint Life Policy.

Sir,—As subscribers to your Journal, we should be glad of your opinion on the following question in your next issue.

A, in accordance with the trusts of a settlement, took out a Life Policy payable to the *Executors* or *Administrators* of the survivor of B and C. B dies.

(1) Can the survivor assign or surrender the policy during his life?

(2) If the answer to (1) is in the negative, do the policy moneys pass under C's Will?

Please give in your replies references to cases.

31st January. MOORING ALDRICE & HAYDON.

[This letter will be replied to in our "Points in Practice" pages.—ED., *Sol. J.*]

French Death Duties.

Sir,—A client who is paying a visit of some months to the South of France states that she has been advised that if she should die there the French Government will claim a large portion of her estate for Death Duties.

We assume, of course, that such claim could only be made upon property which our client had actually in her possession in France at the date of her death. We have never, however, heard of any such claim being made and shall be glad if any of your readers could let us know, through your columns, whether such a claim has ever been put forward.

Another question upon which we shall be interested to have some information is as to the French Death Duties payable by a person who, to avoid British taxation or for some other reason, takes up a permanent residence in France.

25th January. W. & Co.

A Juror's Fine Remitted.

Sir,—Referring to your Report in last week's issue, as the Solicitor representing Mr. Arthur Prince before the Lord Chief Justice on the 19th ulto., may I be allowed to mention that Mr. Prince had been summoned as a Juror some nine months previously and attended in Court three or four days, but was not called upon to serve. This fact was deposed to in the affidavit before his Lordship.

It was also there pointed out that Mr. Prince's engagements were necessarily made some time ahead, and he might render himself liable to an action for breach of contract if he failed to appear.

Perhaps some of your readers may know of some authorities on the point, if not, one of the Students' Societies might make it a "moot" subject for debate. It might perhaps be contended the breach was occasioned by act of law and therefore excusable.

London, WALTER GASKELL.
2nd February.

Reviews.

The Modern Law of Real Property, by G. C. CHESHIRE, B.C.L., M.A. London: Butterworth & Co. xxxvii and 784 pp. 35s.

The author of this admirable new text book on the Law of Real Property, has set out to present the law on this burning subject as a composite whole. He supplies the necessary historical information which students of real property want and he co-ordinates the old law with the new in praiseworthy fashion.

Book I, contains some 84 pages which deal among other things with the old common law system, and the modifications thereof as the result of the introduction of certain and equitable doctrines. The fourth section of this Book gives the Author's view of the "General Tendencies of the new Legislation." Book II, constitutes the main portion of the work, for in it are explained the rules and principles applicable

to estates and interests in land. The order in which these estates and interests are treated is extremely convenient. Legal estates and interests come first. Then follow in order equitable interests, concurrent interests, future interests, and mortgages. Book III deals with the acquisition, transfer and restriction of estates and interests. And then follows an Appendix containing a summary in convenient form of the principal changes introduced by the recent legislation.

Pleasing features of this new text book are variation in type and the use of marginal notes. These are distinct aids in the study of a subject so complex as the Law of Real Property.

The book contains an accurate statement of the general principles of the law; a few slips have however crept in. On p. 24 the statement is made that frankalmoin is not mentioned in the new Acts and therefore continues. A provision in the 2nd Sched. to the Administration of Estates Act has obviously been overlooked. On p. 136, the statement is boldly made that a tenancy at will is an equitable interest and not a legal estate; no authority or argument is given. Others have declared a tenancy at will to be a legal interest. The matter is certainly not altogether free from doubt. The chapter on Future Interests, is perhaps not as good as the other sections of the book. Our attention has been drawn to an ambiguous statement on p. 451 to the effect that the "Modern Acts refer indiscriminately to executory limitations and to limitations by way of remainder." If by this is meant that such expressions are used without discrimination, the one to denote the other, such a statement (made by the way without any authority or example being cited), is certainly not accurate. On p. 447 an example is given of an equitable contingent remainder as follows: A grant "unto and to the use of T in fee simple in trust for C in fee simple when he attained twenty-one." The blame for such a limitation might have fallen upon the printer, who might have been accused of having omitted the particular prior estate preceding C's remainder; but on the next page, the declaration is made in bold type that "a grant unto and to the use of T in trust for A at twenty-one gave A an equitable contingent remainder."

Mr. Cheshire is to be congratulated on giving to students and practitioners a work, which, apart from the few—and they are few—slips such as those to which we have drawn attention, is the product of accurate scholarship and considerable experience in the teaching of Property Law.

PRINCIPLES OF THE LAW OF PERSONAL PROPERTY INTENDED FOR THE USE OF STUDENTS IN CONVEYANCING. By the late JOSHUA WILLIAMS. Eighteenth Edition. By T. CYPRIAN WILLIAMS, assisted by W. J. BYRNE. London: Sweet & Maxwell Limited. lxxxviii and 831 pp. £1 10s.

The appearance of the eighteenth edition of this well-known standard text book, "Williams on Personal Property," will be welcomed by students and by a good many practitioners. The story of the preparation of this new edition as told in the preface, is indeed a tale of woe. But notwithstanding many and serious obstacles and difficulties, the onerous task of revision (up to 31st October last) has been extremely well performed.

The Table of Cases now takes up some fifty pages; and the Index of Statutes—a most useful guide in these days of the disappearance of landmarks—occupies pages lxiii to lxxxv.

There has been a considerable increase in the number of pages in the book until in fact it looks somewhat too bulky. It is on that account, at first sight, more likely to drive away students than to attract them. We cannot, however, see that any subject dealt with can be left out. It would detract from the recognised value of the book to omit portions of the text; while the footnotes are far too important as a source of learning and too useful to the practitioner not to be missed. It is the continually increasing importance of the miscellaneous subjects, which it has been usual to group together as Personal Property, that alone appears to account for the increase in bulk; and this is a matter over which no editor has control!

Another difficulty with which every editor has had recently to contend in preparing new editions is incessant legislative changes. Thus, in note (*e*) on p. 237 we are told that s. 130 of the Bankruptcy Act, 1914, is repealed by the Administration of Estates Act, 1925. As it happens, however, that repeal has been found to have been excessive and the section has consequently been restored by the Expiring Laws Act, 1925.

On the title page the date of the new edition appears as 1926. The law as it was before 1926 is, however, described in the present tense as if still in force, e.g,. on p. 595, the statement is made that "the distribution of the surplus of his (deceased's) personal estate is regulated by Statutes of the reigns of Charles II and James II, &c.," and the fact that there has been a change in the law is announced only in a footnote. Such arrangements are liable to mislead.

It may be urged that the high standard of the work generally, the accuracy with which it has been revised, and, in particular, the number and range of the authorities cited are ample grounds for strongly commending the eighteenth edition of "Williams," to students and practitioners.

Books Received.

The Law Relating to Private Trusts and Trustees. Sir ARTHUR UNDERHILL, LL.D. 8th Edition. Butterworth & Co., Bell-yard, Temple Bar. 45s. net.

The Law of Property Acts, being an important Series of Lectures given by Mr. A. F. TOPHAM, K.C., to The Solicitors' Managing Clerks' Association. Reprinted from *The Solicitors' Journal*. With Index. The Solicitors' Law Stationery Society, Ltd., 22, Chancery-lane, W.C., and Branches. 6s. net.

An Introduction to the History of English Law. 2nd Edition. Partly re-written. HAROLD POTTER, LL.B. Sweet and Maxwell, Ltd., 2/3 Chancery-lane; The Carswell Co. Ltd., Toronto; The Law Book Co. of Australasia, Ltd., Sydney Melbourne and Brisbane. 10s. 6d. net.

Workmen's Compensation and Insurance Reports, containing cases germane to Workmen's Compensation, Employers' Liability, Insurance (except Marine), and National Insurance. W. A. G. WOODS, LL.B. Stevens & Sons, Ltd., 119/120, Chancery-lane, W.C.2; Sweet & Maxwell, Ltd., 2/3, Chancery-lane, W.C.2; W. Green & Son, Ltd., Edinburgh. Part 2, 1925. Annual Subscription 30s. post free.

Criminal Appeal Cases. Vol. 19, pp. 43–72. Part 3. HERMAN COHEN. Sweet & Maxwell, Ltd., 2/3 Chancery-lane, W.C.2. 1926. 7s. 6d. net.

The Practitioner's Probate Manual; being a guide to The Procedure on Obtaining Grants of Probate and Administration, with the Rules, Orders and Fees, and Directions as to the Payment of Probate and Estate Duty. CHARLES H. PICKEN. 14th Edition, 321 pp. and Index. 1926. Waterlow & Sons, Ltd., London-wall and Birchin-lane, London.

Arbitrations. A Text Book for Arbitrators, Umpires and all connected with Arbitrations, more especially Architects, Engineers and Surveyors. In tabulated form, with the chief cases governing the same, and an Appendix of Forms, Statutes, Rules, &c. By the late Professor BANISTER FLETCHER, J.P., D.L., F.R.I.B.A., F.K.C. 4th Edition. Revised and largely re-written by Sir BANISTER FLETCHER, Architect, F.R.I.B.A., F.S.I., and Major H. PHILLIPS, Architect, D.S.O., F.R.I.B.A., F.S.I., A.M.I.C.E., Barristers-at-Law. R. T. Batsford, Ltd., 94, High Holborn. 156 pp. With Index, 10s. net.

A Supplement to the 8th Edition of Chalmer's and Hough's Commentary on The Bankruptcy Acts. Containing The

Provisions of the various Law of Property Consolidation Acts of 1925 and Rules thereunder relating to Bankruptcy and Deeds of Arrangement, and the Provisions of The Administration of Justice Act, 1925, relating to Deeds of Arrangement, with Rules thereunder. Waterlow and Sons, Ltd., London-wall and Birchin-lane. 62 pp. With Index, 6s. net.

The Land Charges Act, 1925. A Practical Guide to the Procedure in H. M. Land Registry, together with full Text of the Act, Rules, Fee Orders, Forms. J. S. Stewart-Wallace, M.A. (Oxon), of The Inner Temple, Barrister-at-Law, Chief Land Registrar, and W. G. Nottage. Waterlow & Sons, Ltd., London-wall and Birchin-lane. 140 pp. With Index, 7s. 6d. net.

The Licensing Acts, by the late James Paterson, M.A., Barrister-at-Law, being The Licensing Consolidation Act, 1910, The Finance (1909-10) Act, 1910, The Licensing Act, 1921, The Intoxicating Liquor (Sale to Persons under 18) Act, 1923, and the Extant Provisions of The Licensing Acts from 1830 to 1902, and Forms. 36th Edition. By Harry Baird Hemming, LL.B., Barrister-at-Law, and S. E. Major, Junr., Solicitor, Joint Clerk to Justices of Barrow-in-Furness, &c. 1,244 pp. and Index, 153 pp. Butterworth & Co., Bell-yard, W.C. 22s. 6d. net. Thin Edition 3s. 6d. extra.

Incapacity or Disablement in its Medical Aspects. E. M. Brockbank, M.B.E., M.D., F.R.C.P., Hon. Physician, Royal Infirmary, Manchester. H. K. Lewis & Co. Limited, London. With Index, 120pp.

An Analysis of the Nineteenth Edition of Snell's Principles of Equity with notes thereon. E. E. Blyth, B.A. LL.D. (Lond.) Solicitor. Thirteenth Edition. Sweet & Maxwell, Limited, 2/3, Chancery-lane. 266 pp. (with Index). 10s. 6d. net.

House of Lords.

Lapish *v.* **Braithwaite.**

29th January.

Local Government—Borough Councillor—Contract with Company—Share or Interest in Contract—Penalty—Municipal Corporations Act, 1882, ss. 12, 41.

An alderman of the City of Leeds was a shareholder and managing director of a company having contracts with the Leeds Corporation.

Held, that he was not disqualified under the Municipal Corporation Act, 1882, s. 12, from acting as alderman by reason of his being managing director of the contracting company.

This was an appeal from the Court of Appeal (69 Sol. J. 70). The respondent was an alderman of the City of Leeds and had acted in that capacity by attending a meeting of the council and voting upon a resolution. He was at the time a shareholder and managing director of four companies having current contracts with the council, and this action was brought to have it decided whether the respondent was disqualified from acting as alderman by reason of his being managing director of the contracting companies. Bailhache, J., held that the respondent was disqualified, but the Court of Appeal by a majority reversed his decision.

The Lord Chancellor said it was clear that the respondent was not disqualified by reason only of his being a shareholder of the companies. It might well be that as a shareholder he had an indirect interest in the contracts entered into by the companies, and so came within the Act, but this indirect interest did not itself disqualify him, for it was expressly enacted by s-s. 2 of s. 12 that a person should not be so disqualified by reason only of his having a share or interest in a company incorporated under the Companies Act. Nor was the respondent disqualified by reason only of his being a managing director. A managing director is the servant of the company, and has, if he is paid by a fixed salary, no interest, whether direct or indirect in the contracts themselves, and it is therefore unnecessary to consider whether if he came within the section he would be excepted from it by s-s. 2. If, however, he were remunerated by a percentage or commission on the profits of the contracts or on the profits of the companies available for dividend different considerations would arise, but here there was nothing to show that the respondent was in fact entitled to any such percentage or commission. The appeal, therefore, failed, but he desired to add that there were now many companies in which most or substantially all of the shares were held by one man and the Legislature might well consider whether the section should not be strengthened by extending the disqualification to persons holding a substantial proportion of the shares or in some other way.

The other noble and learned Lords concurred.

Counsel: *Maugham*, K.C., and *J. H. Stamp*; *Sir John Simon*, K.C., *W. A. Greene*, K.C., and *Heckscher*.

Solicitors: *Smiths, Fox & Sedgwick* for *H. B. James and Morrish*, Leeds; *Maxwell, Simpson & Batley* for *Simpson, Peckover, Curtis & Batley*, Leeds.

[Reported by S. E. Williams, Esq., Barrister-at-Law.]

Court of Appeal.

No. 1.

Booth *v.* **Thomas.** 22nd January.

Landlord and Tenant—Lease—Adjacent Land owned by Landlord—Culvert Confining Brook on Adjacent Land — Non-Repair of Culvert — Leased Building Damaged by Escaping Water—Lessee's Remedy—Breach of Covenant—Quiet Enjoyment—Derogation from Grant — Lessor Liable for Negligence by Omission.

A lessor allowed a culvert confining a brook to fall into disrepair, so that escaping water flowed into land leased by the lessor's predecessor in title, and damaged a building, in respect of which there was a covenant by the lessor for quiet enjoyment.

Held, following principles laid down in Anderson *v.* Oppenheimer, 5 Q.B.D. 602, *that the omission to repair the culvert was tantamount to an act of commission, so as to be a breach of the covenant for quiet enjoyment, and the lessee could recover damages for the injury to the building.*

Appeal from a decision of Russell, J., reported in 70 Sol. J. 226.

In 1886, land was leased for ninety-nine years for the erection of a building, and there was the usual covenant for quiet enjoyment by the lessee. Before the building could be commenced a brook running through the lessor's adjacent land had to be culverted, which was done, and the building subsequently erected. In 1923 the plaintiff was the assignee of the lease of 1886, and the defendant was the owner of the adjacent land and the reversioner of the lease, but the culvert had not been repaired and was in a very bad condition, so that, in December, 1923, the water, swollen by a storm, overflowed on to the demised land and seriously damaged the building. The plaintiff brought the action, alleging (1) breach of the covenant for quiet enjoyment, (2) derogation from grant, and (3) that by the principle of *Rylands* v. *Fletcher*, L.R. 3 H.L. 330, the defendant was obliged to keep a dangerous substance within his own grounds. Russell, J., held that the storm was not sufficiently violent to be an act of *vis major*; that the failure to repair the culvert was the omission of a duty to the adjacent land; and that the defendant disturbed the lessee's enjoyment by confining the brook in a culvert incapable of retaining it. The plaintiff therefore succeeded on grounds (1) and (2) of his claim. The defendant appealed. The Court dismissed the appeal.

POLLOCK, M.R., said that, without saying more as to the other grounds of the action, it seemed that the plaintiff was entitled to succeed on the ground of the breach of the covenant for quiet enjoyment. His counsel had contended with force that the defendant did not do anything himself; there was no act of interruption on his part; and the covenant meant that the lessee should enjoy without any active interruption or disturbance by the lessor. If you looked at the authorities, said counsel, you would not find a case where the omission or failure to do an act was treated as an interruption or disturbance. The cases, however, did not seem to go so far. In *Anderson* v. *Oppenheimer*, 5 Q.B.D. 602, the alleged negligence had been negative, it arose from the bursting of a pipe, but the jury found that the defendant had not been negligent. Brett, L.J., however, said that there was no act of commission or omission which was a breach of duty, and Cotton, L.J., said that an act of omission might be tantamount to an act of commission so as to be a breach of the covenant. That seemed to be good sense and reason. The duty of the defendant was to repair the culvert. There seemed no logical reason, or other reason, for putting an act of omission into a different category to acts of commission, particularly when there was a duty upon the person sought to be made responsible. Further, in *Cohen* v. *Jarman*, 48 W.R. 642; [1900] 2 Q.B. 609, Vaughan Williams, L.J., said that there might, no doubt, be a breach of the covenant for quiet enjoyment by an act of omission, but it must be the omission of some duty. Russell, J., was prepared to find that there was an omission to keep the culvert in a fit condition, and that it was the duty of the owner to prevent damage to adjacent property by taking reasonable precautions. That seemed to be the correct view, and it was the shortest and most direct way of deciding the case.

WARRINGTON and SARGANT, L.JJ., delivered judgments to the same effect.

COUNSEL: *Preston*, K.C., and *G. D. Johnston*, for appellant; *G. B. Hurst*, K.C., and *Buckmaster*, for respondent.

SOLICITORS: *E. A. Howell*, for *Simons, Smyth & Daniel*; *Ranger, Burton & Frost*.

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

In re Blackwell; Blackwell *v.* Blackwell.

15th December, 1925.

WILL—CONSTRUCTION—VESTED OR CONTINGENT GIFT—GIFT TO ELDEST SON LIVING AT TESTATOR'S DEATH—ABSOLUTELY UPON ATTAINING THE AGE OF TWENTY-ONE YEARS—POWER TO APPLY INCOME IN MAINTENANCE—GIFT CONTINGENT ON ATTAINING FULL AGE.

A testator gave certain estates to trustees upon trust to permit his widow to reside in a house, part thereof, and subject thereto for the eldest of his sons who should be living at the time of his death absolutely upon his attaining the age of twenty-one years. There was a power given to the trustees to apply the whole or any part of the income upon the maintenance and advancement of any infant entitled or contingently entitled, and to accumulate the balance. At the testator's death, there was one infant son surviving him.

Held, that the gift was not vested, but contingent upon the infant attaining the age of twenty-one years.

Appeal from a decision of Tomlin, J. By his will made in December 1909, the testator, W. R. Blackwell, gave to his trustees certain freehold estates at Oxhey, near Watford, upon trust to permit his wife to reside there during her widowhood, and subject thereto he directed his trustees to hold the estates with other property at Bushey and in Soho Square, London, upon trust for the eldest of his sons (if any) who should be living at the time of his death absolutely upon his attaining the age of twenty-one years, and upon failure of such son the estates were to fall into the residue. The residue was given equally between the testator's children. There was a power to the trustees to apply the whole or such part, if they should think fit, of the annual income of the property or share to which any infant should be entitled or contingently entitled under the will or any codicil thereto. At the date of the will the testator had no son, but one son was born in 1912. The testator died in September 1912, leaving his widow, a son and three daughters surviving him. The widow re-married in 1917. The trustees, in pursuance of the powers contained in the will, applied part of the income of the settled property in the maintenance of the children, and accumulated the rest. The Crown having claimed supertax upon the income and the accumulations of income, Rowlatt, J., held that as the income was not receivable by the infant, he was not liable to supertax. On appeal the question was raised whether the gift to the infant upon his attaining twenty-one years was vested at the death of the testator or only contingent upon his attaining that age. The Court of Appeal, therefore, directed this point to be decided by taking out an originating summons. Tomlin, J., held on the summons that the interest of the infant was only contingent. The Crown was not represented before Tomlin, J., but, by leave of the Court of Appeal, appealed from the decision, and the appeal was heard immediately before the appeal from Rowlatt, J.

POLLOCK, M.R., having stated the circumstances in which the originating summons was taken out, and the decision of Tomlin, J., thereon, said that counsel for the appellant had called attention to the rule as stated in Hawkins on Wills, 3rd ed. at p. 282, as follows: "In the construction of devises of real estate it has long been an established rule . . . that all estates are holden to be vested, except estates in the devise of which a condition precedent to the vesting is so clearly expressed that the courts cannot treat them as vested without deciding in direct opposition to the will." That observation was well founded. They had therefore to decide whether or not those words, "for the eldest of my sons (if any) who shall be living at the time of my death absolutely upon his attaining the age of twenty-one years," gave a vested or contingent interest to the son. There was only one son, but there might have been more than one son, and a son secondly or thirdly born might become the eldest son for the purposes of the trust. It was clear from *Boraston's Case*, 3 Co. Rep. 199, that words which were apparently words of time might be words of contingency, and *vice versa*. Here it was argued that the words postponed the time of possession, and were not words of contingency. He, his lordship, did not propose to go through all the cases which had been cited, but agreed with the reasoning and conclusion of Tomlin, J. The effect of the appellant's agreement was to rule out the word "absolutely," and alter the sentence in which it occurred in an unjustifiable manner. The word "absolutely" stood as a barrier against the argument for immediate vesting. The case of *In re Ussher*, 1922, 2 Ch. 321, was decided on the effect of a direction to the trustees to apply the whole or any part of the income as they might in their absolute discretion think fit for the maintenance, education or benefit of the person presumptively entitled to the residuary estate, and that was also the case in *Re Hume*, 1912, 1 Ch. 693. If the words in the present will could be taken as being a direction, those cases would apply, but it was clear that both in the maintenance and advancement clauses there was a mere power and no direction. In his opinion, the decision of Tomlin, J., was right, and the appeal must be dismissed. The effect was that as the vested income did not reach the super-tax limit, the appeal from Rowlatt, J. also failed.

WARRINGTON, L.J., who referred to the rules laid down in *Phipps* v. *Ackers*, 9 Cl. & Fin. 583, and to *Re Francis*, 1905, 2 Ch. 295, and SARGANT, L.J., delivered judgment to the same effect.

COUNSEL: *M. Beebee* (with him *Sir Douglas Hogg*, A.-G., and *Sir Thomas Inskip*, S.-G.), for the appellant; *Cunliffe*, K.C., and *Vernon*; *Dighton Pollock*; *Nicholson Combe*, for respondents.

SOLICITORS: *Solicitor of Inland Revenue*; *Charles Stevens and Drayton*.

[Reported by H. LANGFORD-LEWIS, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Bradshaw *v.* **The Air Council.**

Romer, J. 16th December, 1925.

ARBITRATION—ACQUISITION OF LAND—COSTS—LUMP SUM—ARBITRATOR'S DISCRETION—ACQUISITION OF LAND (ASSESSMENT OF COMPENSATION) ACT, 1919, 9 & 10 Geo. 5, c. 57, s. 5, s-ss. (1), (3), (4) and (5).

By s. 5 (4) of the Acquisition of Land (Assessment of Compensation) Act, 1919, the costs of an arbitration under the Act shall be in the discretion of the official arbitrator, who may direct to and by whom and in what manner those costs or any part thereof shall be paid.

Held, that it was open to the official arbitrator to award a lump sum for costs, and that he could do so in his discretion, although he did not know the actual amount of the costs.

This was a motion by a claimant in an arbitration held under the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919, for the award to be remitted to the arbitrator on the ground that he had, in making an order as to costs, not properly exercised the discretion conferred upon him by s. 5 (4) of the said statute. The facts were these: The claimant was the owner of certain land with regard to the acquisition of which an arbitration had been held under the above-mentioned statute. He had claimed a sum of £17,000 odd, and before the hearing of the arbitration the president of the Air Council had made him an unconditional offer of £10,000. The official arbitrator awarded the claimant a sum of £11,000 odd in respect of his interest in the land and the consequential damage thereto, and in dealing with the costs directed the Council "to pay the sum of £100 towards the costs of the claimant."

By s. 5 of the statute, it is provided: "(1) Where the acquiring authority has made an unconditional offer in writing of any sum as compensation to any claimant and the sum awarded by an official arbitrator to that claimant does not exceed the sum offered, the official arbitrator shall, unless for special reasons he thinks proper not to do so, order the claimant to bear his own costs and to pay the costs of the acquiring authority so far as such costs were incurred after the offer was made . . . (3) Where a claimant has made an unconditional offer in writing to accept any sum as compensation and has complied with the provisions of the last preceding sub-section, and the sum awarded is equal to or exceeds that sum, the official arbitrator shall, unless for special reasons he thinks proper not to do so, order the acquiring authority to bear their own costs and to pay the costs of the claimant so far as such costs were incurred after the offer was made. (4) Subject as aforesaid, the costs of an arbitration under this Act shall be in the discretion of the official arbitrator who may direct to and by whom and in what manner those costs or any part thereof shall be paid . . . (5) An official arbitrator may himself tax the amount of costs ordered to be paid, or may direct in what manner they are to be taxed."

ROMER, J., after stating the facts, said: I have to consider (1) whether it is open to the arbitrator to award a lump sum, and (2) if the arbitrator had the power, whether he had sufficient materials before him to enable him to exercise his discretion. I cannot help thinking that it is reasonably clear from the statute that where a sum is awarded by the arbitrator in excess of the amount offered by the authority, but less than the sum which the claimant had offered to accept, the arbitrator has an absolute discretion as to costs. It is said that the arbitrator had no discretion to award a lump sum, because that sum was not "any part of the costs," and that all he could do was to direct in what manner the costs or any part thereof should be paid. I do not feel justified in putting that restrictive meaning on the section. I think that in awarding the £100 the arbitrator has, in terms, awarded to the claimant part of his costs of the arbitration. With regard to the contention that the arbitrator did not know the amount of the costs and had not therefore material before him to enable him to make a proper award, the arbitrator must have had a fairly shrewd idea of the amount of the costs, and, indeed, he was a person upon whom the power was conferred of taxing the costs. I therefore think that it is impossible to say that the arbitrator had not sufficient materials before him to justify him in making the award of £100 towards the plaintiff's costs. The motion to review the award therefore fails.

COUNSEL: *Hughes*, K.C., and *R. C. Maxwell*; *Merriman*, K.C., and *Giveen*.

SOLICITORS: *Holloway, Blount & Duke*; *The Treasury Solicitor*.

[Reported by L. MORGAN MAY, Esq., Barrister-at-Law.]

High Court—King's Bench Division

Dunbar *v.* **Smith.**

Bankes and Scrutton, L.JJ. Sitting as additional judges of the King's Bench Division. 14th December, 1925.

LANDLORD AND TENANT — RENT RESTRICTION — HOUSE DIVIDED INTO FLOORS EACH LET AS SEPARATE DWELLING-HOUSES—LANDLORD RECOVERING POSSESSION OF ONE FLOOR—REPAIRS CARRIED OUT—SUBSEQUENT LETTING OF THAT FLOOR—WHETHER DE-CONTROLLED—RENT AND MORTGAGE INTEREST RESTRICTIONS ACT, 1923, 13 & 14 Geo. 5, c. 32, s. 2 (1).

By s. 2 (1) of the Rent and Mortgage Interest Restrictions Act, 1923, "Where the landlord of a dwelling-house to which the principal Act applies is in possession of the whole of the dwelling-house at the passing of this Act, or comes into possession of the dwelling-house at any time after the passing of this Act, or from and after the date when the landlord subsequently comes into possession, as the case may be, the principal Act shall cease to apply to the dwelling-house: Provided that, where part of a dwelling-house is lawfully sub-let, and the part so sub-let is also a dwelling-house to which the principal Act applies, the principal Act shall not cease to apply to the part so sub-let by reason of the tenant being in or coming into possession of that part, and if the landlord is in, or comes into possession of any part not so sub-let, the principal Act shall cease to apply to that part notwithstanding that a sub-tenant continues in, or retains possession of any other part by virtue of the principal Act."

The appellant, the landlord of a house divided into three floors, each of which was let as a separate dwelling-house within the operation of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, entered into possession of one of the floors after 31st July, 1923, and carried out certain repairs. A few days later he re-let it to a tenant who remained in occupation until May, 1924, when the respondent became the tenant. The respondent applied for an apportionment of the rent of the first floor. The county court judge held that the premises were not de-controlled. The landlord appealed.

Held, allowing the appeal, that the first floor was a dwelling to which the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, applied; that it came into the possession of the landlord after the passing of the Rent and Mortgage Interest (Restrictions) Act, 1923, and had thereby become de-controlled; and that the proviso to s. 2 (1) of the Act of 1923 related to the sub-letting of a part of a house by a tenant and had no application to the present case.

Appeal from Clerkenwell County Court. The respondent, who was the tenant of three rooms on the first floor of 50, Pemberton-gardens, Highgate, took out a summons for an apportionment of the rent of those rooms. The whole house consisted of three floors, and it appeared that each of the floors was separately let in August, 1914. The rent of the rooms on the first floor at that date was 10s. a week. In 1916 that floor was let to a Mrs. Putnam, who remained in occupation until

November, 1923. The landlord then entered into possession of that floor for fourteen days, carried out certain repairs, and then let it at a weekly rent of £1 to one Sharp, who remained in occupation until May, 1924. In that month he left and was succeeded by the present tenant, who paid a rent of 22s. 6d. a week. During 1920 at least one notice of increase of rent had been served in respect of that floor. At the hearing of the application for an apportionment the county court judge held that the floor had not become de-controlled, although the landlord had been in possession for fourteen days in November, 1923; that possession of that floor was not "possession of the whole of the dwelling-house" within s. 2 (1) of the Rent and Mortgage Interest Restrictions Act, 1923, because, for the purposes of this case, that expression meant the whole of the ten rooms contained in the building known as 50, Pemberton-gardens. He also held that the standard rent of the first floor was 10s. a week. The landlord appealed.

BANKES, L.J.: For the purposes of this case the appellant must be treated as the freeholder. The county court judge was wrong in holding that s. 2 (1) of the Rent and Mortgage Interest Restrictions Act, 1923, applied only where the whole structure, if it consisted of several floors separately let, had come into the possession of the landlord. It was necessary to realise that the scheme of the Act rested on the possibility of the whole structure becoming a number of separate dwelling-houses within the operation of the statute. When the section spoke of "a dwelling-house to which the principal Act applies," such house might be the whole house if it was let as a whole, or a part of it if the part were let separately. The house in the present case was "a dwelling-house to which the Act applies," it came into the possession of the landlord after the passing of the Act of 1923, and had therefore become de-controlled. The proviso to the sub-section dealt with the sub-letting by the tenant of a part of a house, a condition of things having no application to the present case.

SCRUTTON, L.J., delivered a concurring judgment.

Appeal allowed.

COUNSEL: For the appellant, *Merriman*, K.C., and *R. J. Sutcliffe*; for the respondent, *Phineas Quass*.

SOLICITORS: For the appellant, *Herbert A. Phillips*; for the respondent, *H. W. Henniker Rance & Co.*

[Reported by COLIN CLAYTON, Esq., Barrister-at-Law.]

Catto *v.* Curry.

Acton and Talbot, JJ. 13th January.

LANDLORD AND TENANT—RENT RESTRICTION—DWELLING-HOUSE OCCUPIED BY TENANT—SUB-LEASE OF PART OF HOUSE—RESUMPTION BY TENANT OF PART SUB-LET—SUBSEQUENT SUB-LEASE OF SAME PART—WHETHER SUB-LET PREMISES DE-CONTROLLED—RENT AND MORTGAGE INTEREST RESTRICTIONS ACT, 1923, 13 & 14 Geo. v, c. 32, s. 2 (1).

Section 2 (1) of the Rent and Mortgage Interest Restrictions Act, 1923, enacts:—"Where the landlord of a dwelling-house to which the principal Act applies is in the possession of the whole of the dwelling-house at the passing of this Act, or comes into possession of the dwelling-house at any time after the passing of this Act, or from and after the date when the landlord subsequently comes into possession, as the case may be, the principal Act shall cease to apply to the dwelling-house: Provided that, where part of a dwelling-house is lawfully sub-let, and the part so sub-let is also a dwelling-house to which the principal Act applies, the principal Act shall not cease to apply to the part so sub-let by reason of the tenant being in or coming into possession of that part, and if the landlord is in, or comes into, possession of any part not so sub-let, the principal Act shall cease to apply to that part notwithstanding that a sub-tenant continues in, or retains, possession of any other part by virtue of the principal Act."

Under a lease from a superior landlord the respondent occupied as tenant a house which came within the scope of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920. He lawfully sub-let rooms in this house, which rooms were also a dwelling-house within the operation of the Act of 1920. After the sub-tenant had given up possession of the rooms the respondent entered into possession of them (after 31st July, 1923) and carried out certain decorations. On their completion he sub-let the rooms to the appellant. The appellant, after paying the agreed rent for a certain period, applied for an apportionment of the rent of the premises. The decision of the registrar granting an apportionment was reversed by the county court judge.

Held, allowing the appeal, that the word "tenant" in the first proviso to s. 2 (1) of the Rent and Mortgage Interest Restrictions Act, 1923, meant mesne tenant as distinct from landlord on the one hand, and sub-tenant on the other; that it was specially inserted in the proviso to meet the case of a tenant who was landlord to a sub-tenant; and that, therefore, the Act of 1920 did not cease to apply to the rooms sub-let to the appellant, although the respondent had been in possession of them during two sub-tenancies.

Appeal from the Brentford County Court. The question for the court was whether rooms in a house which had been sub-let by the tenant of the whole house had become de-controlled because the tenant had been in possession of them in an interval between two sub-tenancies. In February, 1924, the respondent, who was the tenant of a dwelling-house, 442, High-road, Chiswick, which came within the operation of the Rent Restriction Act, 1920, sub-let three rooms in the house to the appellant and continued to occupy the rest of the house himself. The respondent was, therefore, a tenant to the head landlord or mesne tenant between the landlord and sub-tenant. There was no dispute that the rooms were lawfully sub-let nor that they were a dwelling-house within the Act of 1920. Before the appellant came into possession of the rooms the respondent had been in occupation of them for a substantial period after a previous sub-tenant had left them, and in that interval he had caused certain decorations to be done. The appellant paid the agreed rent to the respondent until May, 1925, when he ceased to make further payments, and in July, 1925, he took out a summons in the Brentford County Court for an apportionment of the rent of the premises. The registrar ordered an apportionment, but on appeal the county court judge reversed the order, holding that the respondent had entered into actual possession of the rooms within the meaning of s. 2 (1) of the Rent and Mortgage Interest Restrictions Act, 1923, and that the rooms had therefore become de-controlled. The sub-tenant appealed.

ACTON, J.: The question to be decided was whether the rooms occupied by the appellant were de-controlled by reason of the operation of the first proviso to s. 2 (1) of the Rent and Mortgage Interest Restrictions Act, 1923. It was argued for the appellant that the proviso contemplated three parties, the landlord, the tenant, and the sub-tenant; that in the phrase "by reason of the tenant being or coming into possession of that part," the word "tenant" meant mesne tenant, and distinguished him from the head landlord on the one hand, and the sub-tenant on the other; and that the true meaning of the proviso was that where part of a dwelling-house to which the Act of 1920 applied was lawfully sub-let, and the part so sub-let was also a dwelling-house to which the Act applied—both of which conditions were fulfilled here—the Act of 1920 should not cease to apply to the part sub-let on the mesne tenant's coming into possession of that part. The argument for the respondent was that the respondent's having taking possession of the rooms on the departure of the first sub-tenant, and having done certain decorations to them before the creation of the second sub-tenancy, the appellant's rooms had thereby become de-controlled. Counsel for the appellant replied that the proviso was inserted to prevent de-control in the circumstances

of this case. In his (his lordship's) opinion, that was the right and, indeed, the only reasonable construction. No authority had been cited which conflicted with the argument for the appellant. *Jenkinson* v. *Wright*, 1924, 2 K.B. 645, so far as it went, appeared to support that argument rather than to be adverse to it; and *Dunbar* v. *Smith* did not affect the present decision of this court. For these reasons the appeal must be allowed.

TALBOT, J., in a concurring judgment, said that the Act of 1923 provided by s. 2 (1) that where the landlord of a dwelling-house to which the Act of 1920 applied was in, or came into, possession of the dwelling-house, the Act of 1920 was to cease to apply to it. If the Legislature had stopped there, since in s. 12 of the Act of 1920 "landlord" was to be interpreted as including a tenant who sub-let to a sub-tenant, the Act of 1920 would have ceased to apply to the rooms occupied by the appellant when the respondent came into possession of them. To guard against that consequence as between tenant and sub-tenant, the Legislature inserted the proviso to s. 2 (1) of the Act of 1923. The word "tenant" in that proviso was used in distinction to "landlord," and its plain and unambiguous meaning was that the provisions contained in the first part of the sub-section were not to apply, and that the Act of 1920 was not to cease to be of effect in the case expressly described by the proviso, namely, where the tenant, as distinct from the landlord, came into possession of a dwelling-house or part of a dwelling-house which had been sub-let. The decision of the county court judge was erroneous; for he had directed his mind only to the question of whether there had been actual possession of the rooms by the respondent and had held that the Act of 1920 had ceased to apply to those rooms. The appeal must be allowed,

COUNSEL: For the appellant, *H. Glyn-Jones* and *Robert Fortune*; for the respondent, *Humphrey Edmunds*.

SOLICITORS: For the appellant, *Henry T. Nicholson*; for the respondent, *Wilfrid Firth*, Brentford.

[Reported by COLIN CLAYTON, Esq., Barrister-at-Law.]

Obituary.

MR. A. J. LAWRIE, K.C.

The death occurred at his residence, Scarsdale Villas, W., on Monday morning, of Mr. Allan James Lawrie, K.C. Son of the late Mr. J. D. Lawrie, of Monkriff, East Lothian, Mr. Lawrie was educated at Fettes and at Trinity College, Oxford, and played Rugby football for his college with considerable success. He was called to the Bar by Lincoln's Inn in January, 1899. From his Oxford days he was an ardent Liberal, and was a member of the Eighty Club, and also of the National Liberal Club. He unsuccessfully contested the Holderness Division of Yorkshire in the Liberal interest in 1900 and following his succession to the East Lothian Estate of his father he continued to take an active part in Liberal politics in London and also in the County of Haddington. In 1908 he was appointed Treasury Counsel at Middlesex Sessions, and when Mr. Loveland-Loveland, K.C., retired in 1911 from his long and distinguished tenure of the post of Deputy-Chairman of the London Sessions, Mr. Lawrie was (when only thirty-eight years of age) appointed to that responsible and important position. He was therefore one of the youngest counsel to have been raised to the Bench for a great many years. His common sense, sound judgment and knowledge of the world proved excellent qualities for the post, and fully justified a selection which was regarded in legal circles at the time as an experiment. He frequently had unpleasant and even painful duties to perform, but tempering justice with mercy he seemed to aim—and we think rightly—less at the punishment than at the reformation of the criminal. Mentally keen and alert, he was unusually quick at penetrating the elaborately prepared defences of the habitual criminal.

Mr. Lawrie occupied his leisure moments with shooting, fishing and golf. He won the Bar Golfing Tournament in 1912, was runner-up in 1921, was this year captain of the Deal Golf Club, and for many years a member and regular attendant at all the meetings of the "Golf Circle" of the National Liberal Club. He took "silk" in 1924, a fitting recognition of his long and distinguished service on the Bench. He married Ethel, youngest daughter of the late Judge Adams, K.C., and had three sons, the eldest of whom is now head boy at Fettes.

Always genial and kind-hearted, he was very popular wherever he was known, and his loss will be deeply felt in many circles.

Societies.

***To Secretaries.*—Reports of meetings, lectures, etc., to ensure insertion in the current number, should reach the office not later than 10 a.m. Wednesday.**

Sheffield and District Law Students' Society.

"An undergraduate happened to possess the same name as a well-known citizen A and, being about the same height and build, it occurred to him to impersonate A in a common students' rag, and he accordingly, with a little assistance from grease paint and similar accessories, figured in some rather rowdy proceedings as A. The rag eventually led to police court proceedings and though it was the undergraduate who was convicted the illustrated press managed to convince the public that it was A himself who had been guilty of disorderly conduct. Can A succeed in an action for damages against his impersonator"?

This was the subject of a very interesting debate held by the Sheffield and District Law Students' Society on Tuesday, 19th January, in the Law Library.

There were present Mr. J. G. Chambers (honorary member) in the chair and thirteen ordinary members.

Mr. C. R. Arksey, supported by Mr. T. W. A. Hoyland, opened in the affirmative and Mr. J. H. Booth, supported by Mr. G. H. Swann in the negative.

On the debate being thrown open all those present spoke; the chairman then summed up and the motion was put to the vote, and carried by eight votes to five.

A further vote was then taken to decide whether the action would be for libel or for slander; four were in favour of libel and four in favour of slander.

Law Association.

The usual monthly meeting of the Directors was held at The Law Society's Hall, on Thursday, the 28th January, Mr. J. E. W. Rider in the chair. The other Directors present were Mr. J. D. Arthur, Mr. E. B. V. Christian, Mr. F. W. Emery, Mr. J. R. H. Molony, Mr. A. E. Pridham, Mr. John Venning and Mr. W. M. Woodhouse, with the Secretary, Mr. E. E. Barron. A sum of £185 was voted in relief of deserving applicants; thirty new members were elected and other general business transacted.

Gray's Inn.

Friday, 29th January, being the Grand Day of Hilary Term at Gray's Inn, the Treasurer (Master W. Clarke Hall), and the Masters of the Bench entertained at dinner the following guests: His Excellency the Belgian Ambassador; The Lord Chief Justice of England (The Right Hon. Lord Hewart); The Home Secretary (The Right Hon. Sir William Joynson-Hicks, Bart., M.P.); The Right Hon. Sir Thomas Molony, Bart., K.C.; The President of the Law Society (Sir Herbert Gibson, Bart.); Sir Ernley Blackwell K.C.B.; Brigadier-General Sir William Horwood, K.C.B., D.S.O.; Sir Robert Armstrong-Jones, C.B.E.; The Recorder of London (Sir Ernest Wild, K.C.); Sir Edmund Gosse, C.B.; Sir Robert Parr.

The Benchers present in addition to the Treasurer were: Mr. C. A. Russell, K.C.; Mr. Thomas Terrell, K.C.; The Right Hon. Sir Plunket Barton, Bart., K.C.; Mr. Herbert F. Manisty, K.C.; Mr. Arthur E. Gill, Sir Montagu Sharpe, K.C.; The Hon. Mr. Justice Greer; His Honour Judge Ivor Bowen, K.C.; Sir Alexander Wood Renton, K.C.M.G., K.C.; Mr. R. E. Dummett; Vice-Chancellor Courthope Wilson, K.C.; Mr. W. Greaves-Lord, K.C., M.P.; Mr. G. D. Keogh; Mr. J. W. Ross-Brown, K.C.; Mr. Frederick Hinde; with the Chaplain (The Rev. W. R. Matthews, D.D.); and the Under-Treasurer (Mr. D. W. Douthwaite).

Law Students' Journal.

Law Students' Debating Society.

At a meeting of the Society held at the Law Society's Hall on Tuesday, 26th ult., (Chairman, Mr. John F. Chadwick), the subject for debate was "That a capital levy is the only remedy for the present financial position of France." Mr. P. Anderson opened in the affirmative, and Mr. C. Binney opened in the negative. The following members also spoke; Messrs. L. Bentham, R. A. C. Graham, A. S. Diamond, J. MacMillan, H. Malone, Miss Morrison, Messrs. H. Shanly and E. G. M. Fletcher. The opener having replied, the motion was lost by seven votes. There were eighteen members present.

At a meeting of the Society held at The Law Society's Hall, on Tuesday, the 2nd inst. (Chairman, Mr. John F. Chadwick), the subject for debate was:—

"That in the opinion of this House the case of *Parkinson* v. *College of Ambulance* & *Harrison* (1925), 2 K.B. 1, was wrongly decided."

Mr. A. S. Diamond opened in the affirmative, and was supported by Mr. H. M. Pratt, whilst Mr. N. Berridge opened in the negative, seconded by Mr. J. MacMillan.

The following members also spoke: Miss McAndrew, Messrs. L. H. Collins, W. S. Jones, Hart-Leverton, E. G. M. Fletcher, P. Hollins, M. G. Batten, T. C. Spencer-Wilkinson, Christian Edwards, and M. R. Hoare (visitor).

The opener having replied, and the Chairman having summed up, the motion was lost by six votes.

There were twenty-four members and two visitors present.

Rules and Orders.

SOLICITOR, ENGLAND.

REMUNERATION.

THE SOLICITORS' REMUNERATION (REGISTERED LAND) ORDER, 1925, DATED DECEMBER 18, 1925, PRESCRIBING THE REMUNERATION OF SOLICITORS IN CONVEYANCING AND OTHER NON-CONTENTIOUS BUSINESS UNDER SECTION 146 OF THE LAND REGISTRATION ACT, 1925 (15 GEO. 5 c. 21).*

We, the Right Honourable George Viscount Cave, Lord High Chancellor of Great Britain, the Right Honourable Gordon, Lord Hewart, Lord Chief Justice of England, the Right Honourable Sir Ernest Murray Pollock, Master of the Rolls, Herbert Gibson, Esquire, President of the Law Society, Alfred William Taylor, Esquire, President of the Bristol Incorporated Law Society and John Stewart Stewart-Wallace, Esquire, Chief Land Registrar, being the persons authorised by section 146 of the Land Registration Act, 1925, do hereby by virtue of the power vested in us by the said Act and of every other power enabling us in that behalf, order and direct that:—

1. The remuneration of solicitors in conveyancing and other non-contentious business under the Land Registration Act, 1925, shall be regulated as follows:—

(A) For negotiating a sale, purchase or loan, or for conducting a sale by auction, the same remuneration as if the land were unregistered.

(B) For the preparation or perusal of leases, and agreements for leases, or transfers reserving rent or agreements for the same prior to the first registrations of the said leases, agreements or conveyances, the same remuneration as if the land were unregistered.

(C) For first registration of freehold or leasehold land or any legal estate derived thereout, item remuneration shall apply.

(D) For every completed transfer on sale, or charge or mortgage of registered land, or transfer for value of a registered charge, or sub-charge or sub-mortgage of a registered charge or mortgage or transfer for value thereof whether or not any easement right or privilege is reserved or the surface or the mines and minerals or any part thereof are excepted,

(i) Where the land is registered with Absolute or Good Leasehold title, the remuneration shall be that prescribed in the Schedule hereto.

(ii) Where the land is registered with Possessory or Qualified title, and no title excluded from the effect of registration is investigated, the remuneration shall be the same as if the land were registered with Absolute or Good Leasehold title.

(iii) Where the land is registered with Possessory or Qualified title, and title excluded from the effect of registration is investigated, item remuneration shall apply.

(E) For grants of annuities or rentcharges or any easement right or privilege, item remuneration shall apply.

(F) For conversion of a Possessory or Qualified title into an Absolute or Good Leasehold title, or of a Good Leasehold title into an Absolute title, item remuneration shall apply.

(G) In all exchanges and other transactions, save those hereinbefore specified, item remuneration shall apply.

(H) The remuneration prescribed by the Schedule hereto covers (in addition to all searches in, attendances at, correspondence with the Registry, and other matters involved in, incidental to or arising out of the registration) the preparation or perusal (as the case may be) of the contract, or conditions of sale, if any, the perusal of any lease, or other deed mentioned on the register, and all other work incidental to or consequential on the transaction, including all matters which in the case of sales, purchases, charges, mortgages, sub-charges, and sub-mortgages, and transfer of charges or sub-charges, or mortgages of unregistered land are covered by the remuneration prescribed by the Remuneration Order, 1882, Schedule I, Part I.

(I) The scale prescribed by the Schedule hereto shall not apply to transfers for value of charges where the same solicitor acted in the matter on the original charge, or on any previous transfer thereof, or to further charges in similar circumstances. As to such transfers and further charges, item remuneration shall apply but the scale for negotiating the loan shall be chargeable on such transfers, and further charges, where applicable.

(J) The remuneration prescribed by the Schedule hereto, shall not include the disbursements, extra work, business proceedings, or other matters which under Order 4 of the Remuneration Order, 1882, are not to be included in the remuneration prescribed by Schedule I to that Order.

(K) When a solicitor is concerned for the proprietor of land, and also for a person taking a charge thereon, he is to be entitled to receive the charges of the solicitor of the person taking the charge, and one-half of those that would be allowed to the proprietor's solicitor up to £5,000 and on any excess above £5,000 one-fourth thereof.

(L) If the solicitor conducting the business acts on behalf of several parties having distinct interests proper to be separately represented, he is to be entitled to make for each such party after the first, an additional charge not exceeding £3 3s. in each case.

(M) In all cases to which the remuneration prescribed by the Schedule hereto applies, a solicitor may, before undertaking the business, by writing under his hand, communicated to the client, elect that item remuneration shall apply.

2. In this Order the expression "The Remuneration Order, 1882," means the General Order made pursuant to the Solicitors' Remuneration Act, 1881,(*a*) which came into force on the 1st day of January, 1883, and the expression "item remuneration" means the remuneration prescribed by the Remuneration Order, 1882, excepting Schedule I to that Order, and by the Solicitors' Remuneration Act General Order, 1919.(*b*)

3. The Interpretation Act, 1889,(*c*) applies to this Order in like manner as it applies to an Act of Parliament.

4. This Order may be cited as the Solicitors' Remuneration (Registered Land) Order, 1925.

Dated the 18th day of December 1925.

Cave, C.

Schedule.

SCALE OF REMUNERATION FOR TRANSFERS ON SALE, CHARGES, SUB-CHARGES, MORTGAGES, SUB-MORTGAGES AND TRANSFERS THEREOF.

Value of land or amount of charge.	*Scale of Remuneration.*
1. For the first £1,000.	15*s.* per £100 (with a minimum of £1 10*s.*)
For the second and third £1,000.	10*s.* per £100.
For the fourth and fifth £1,000.	5*s.* per £100.
For the sixth and each subsequent £1,000 up to £10,000.	4*s.* per £100.
For each subsequent £1,000 up to £100,000.	2*s.* per £100.
2. Fractions of £100 under £50 to be reckoned as £50. Fractions of £100 above £50 to be reckoned as £100.	
3. Every transaction exceeding £100,000 to be charged for as if it were £100,000.	
4. So long as the Solicitors' Remuneration Act General Order 1925 is in force, the remuneration, which is prescribed under this scale, shall, where the value of the transaction is £50,000 or less, be increased by 33⅓ per centum; Provided that in respect of transactions in excess of £50,000 the amount chargeable shall be according to the scale or shall be reckoned as if the transaction were of the value of £50,000, which ever shall be the greater.	

* This Order, having lain before both Houses of Parliament for one month in accordance with section 6 (1) of the Solicitors' Remuneration Act, 1881, came into operation on the 21st day of January, 1926.

(*a*) 44-5 V. c. 44. (*b*) S.R. & O. 1919, No. 1878. (*c*) 52-3 V. c. 63.

COUNTY COURT, ENGLAND.
COURTS AND DISTRICTS.

THE COUNTY COURT DISTRICTS (PONTYPOOL, TREDEGAR AND NEWPORT) ORDER, 1925. DATED DECEMBER 17, 1925.

I, George Viscount Cave, Lord High Chancellor of Great Britain, by virtue of section 4 of the County Courts Act, 1888 [51-2 V., c. 43], as amended by section 9 of the County Courts Act, 1924 [14-5 G. 5, c. 17], and of all other powers enabling me in this behalf, do hereby order as follows :—

1. The County Court of Monmouthshire held at Tredegar and Abertillery shall be held by the name of the County Court of Monmouthshire held at Tredegar, Abertillery and Bargoed and Courts shall be held in that District at Tredegar, Abertillery and Bargoed.

2. The Parishes or parts of Parishes set out in the first column of the Schedule to this Order shall be detached from and cease to form part of the County Court Districts set opposite to their names respectively in the second column of the said Schedule, and shall be transferred to, and form part of, the County Court Districts set opposite to their names respectively in the third column thereof.

3. In this Order "Parish" shall have the same meaning as in the County Courts (Districts) Order in Council, 1899 [S.R. & O. 1899, No. 178], provided that the boundaries of every Parish mentioned in this Order shall be those constituted and limited at the date of this Order.

4. In this Order an Urban District and a Ward of an Urban District mentioned by name shall mean the Urban District or Ward of that name as constituted and limited at the date of this Order.

5. This Order may be cited as the County Court Districts (Pontypool, Tredegar and Newport) Order, 1925, and shall come into operation on the 1st day of January, 1926, and the County Courts (Districts) Order in Council, 1899, as amended, shall have effect as further amended by this Order.

Dated the 17th day of December, 1925.

Cave, C.

Schedule.

Parishes.	County Court Districts.	County Court Districts.
Gelligaer, part of, viz.: The Pontlottyn, Fochriw, Tirphil, Bargoed and Hengoed Wards of the Urban District of Gelligaer ..	Merthyr Tydfil	Tredegar, Abertillery and Bargoed.
Llanhilleth	Pontypool ..	Tredegar, Abertillery and Bargoed.
Mynyddislwyn, part of, viz.: The Penmain Ward of the Urban District of Mynyddislwyn	Pontypool ..	Tredegar, Abertillery and Bargoed.
Mynyddislwyn, part of, viz.: The Ynysddu, Pontllanfraith and Fleur-de-lis Wards of the Urban District of Mynyddislwyn	Pontypool ..	Newport (Mon.).

Legal News.

Appointment.

Mr. JOHN WILLIAM PORTER, Solicitor, Town Clerk of Berwick-on-Tweed, has been appointed Town Clerk of Hartlepool. Mr. Porter was admitted in 1922 and has been for some time Steward of the Manor of Tweedmouth, Spittle, etc.

WINTER ASSIZES.

The days and places appointed for holding the Winter Assizes are set out as follows in the *London Gazette* :—

SOUTH-EASTERN CIRCUIT (Second Portion) (Mr. Justice Horridge).—13th February, Hertford ; 18th February, Maidstone ; 27th February, Guildford ; 6th March, Lewes.

NORTH-EASTERN CIRCUIT (Mr. Justice Acton and Mr. Justice Branson).—16th February, Newcastle ; 23rd February, Durham ; 2nd March, York ; 8th March, Leeds.

Re CORNISH MUTUAL ASSURANCE CO., LTD. *v.* COMMISSIONERS OF INLAND REVENUE.

With reference to the appeal in this case heard in the House of Lords on the 21st January and reported at p. 343 of THE SOLICITORS' JOURNAL of the 30th January (No. 17, Vol. 70), we are asked to state that the names of the Solicitors for the appellants were stated to be Messrs. Sugden, Hextall and Beal, in accordance with the printed documents filed at the House of Lords. In point of fact, however, they were acting "As Agents for Messrs. Daniell & Thomas, Camborne." —ED., *Sol. J.*

POOR PERSONS RULES.

The Lord Chancellor, after consultation with the President of the Law Society, has fixed the 6th April, 1926, as the date on which the Rules of the Supreme Court (Poor Persons), 1925, shall come into operation.

BAR COUNCIL MEETING.

At the annual general meeting of the Bar, held last Monday, Mr. Gilbert Hurst, K.C., drew attention to a paragraph in the annual statement relating to printed conveyancing forms published for sale with barristers' names. The matter had been raised by the Conveyancers' Institute, referred to the Professional Conduct Committee, and after consideration the Council had expressed the opinion that the practice was not contrary to professional etiquette. Mr. Hurst considered that the practice was a serious extension of a principle and it might be that one of these days advertising in the fullest sense of the word might be possible. He thought that in their profession, as in the medical profession, the essence of their business was not to advertise, and he asked for information as to how the Council's decision had been arrived at.

Sir Thomas Hughes, in replying, said the matter had been carefully considered. There was, he said, a general feeling in the Council that the practice was not an entirely desirable one, but they felt it difficult to say that it was contrary to professional etiquette. The majority of the Council were in favour of saying that it was not contrary to professional etiquette.

REPORT OF SELECT COMMITTEE ON LOCAL LEGISLATION.

The Select Committee on Local Legislation has issued a Special Report in which they state, amongst other things, that during the last Session of Parliament fourteen Bills originating in the House of Commons, and ten originating in the House of Lords were considered. Interesting instances are given of clauses allowed in certain of these measures.

The Watch Committee of the Bolton Corporation were empowered, upon due notice, to prescribe the route to be followed by processions and to prohibit their assembly or passage in particular districts or streets.

In the Bradford Corporation Bill the Committee approved a clause introducing an entirely new legal principle. This allows the medical officer of the Corporation, upon a written certificate that any person is aged, infirm or phys cally incapacitated and resides in premises which are insanitary owing to any neglect on the part of the occupier, and after thorough inquiry and consideration has shown the necessity in the public interest and in the interest of the persons concerned, to apply to a court of summary jurisdiction which, upon oral proof, may make an order for the removal of such person to a proper institution.

The Bath Corporation were empowered to prohibit the placing of aerial wires across or along any street, except with the consent of the Corporation.

The Newport Corporation were allowed a clause giving powers to provide suitable places for use as parking places for motor cars other than hackney carriages or omnibuses.

WHELAN *v.* HENNING.

In reply to a question asked in the House of Commons, on the decision and circumstances in *Whelan* v. *Henning* Mr. Churchill made the following interesting announcement: I am aware of the case of *Whelan* v. *Henning*, to which my hon. friend refers. The point in issue was, in effect, whether under the provisions of the Income Tax Acts, tax in respect of income of the class in question is payable over a period of years by reference to the full amount of the income or to a smaller sum. The decision disapproves the interpretation of the law which had prevailed from the beginnings of our income tax code, and the consequent position is receiving my attention. On the question of costs in this case the position is as follows:—In the High Court the respondent appeared in person, and was awarded costs by the Court. These have been paid as fixed by the taxing master. In the Court of Appeal, counsel was engaged by the respondent, who was again awarded his costs by the Court. These will be paid when the bill of costs is delivered and taxed. Before the case came on in the House of Lords, the respondent was informed that the Crown would in any event pay all his costs in the House, subject to a reasonable limitation as regards counsel's fees, and in answer to an observation by one of the learned Lords this arrangement was stated to the House by my right hon. friend the Attorney-General. I have arranged to hear representations on the general question of costs incurred in these taxation cases, and my hon. friend may rest assured that this difficult matter will receive my careful consideration in all its aspects.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Romer.
Monday ..Feb. 8	Mr. Ritchie	Mr. More	Mr. Jolly	Mr. More
Tuesday 9	Synge	Jolly	More	Jolly
Wednesday 10	Hicks Beach	Ritchie	Jolly	More
Thursday 11	Bloxam	Synge	More	Jolly
Friday 12	More	Hicks Beach	Jolly	More
Saturday 13	Jolly	Bloxam	More	Jolly

Date.	Mr. Justice Astbury.	Mr. Justice Lawrence	Mr. Justice Russell.	Mr. Justice Tomlin.
Monday ..Feb. 8	Mr. Hicks Beach	Mr. Bloxam	Mr. Synge	Mr. Ritchie
Tuesday 9	Bloxam	Hicks Beach	Ritchie	Synge
Wednesday 10	Hicks Beach	Bloxam	Synge	Ritchie
Thursday 11	Bloxam	Hicks Beach	Ritchie	Synge
Friday 12	Hicks Beach	Bloxam	Synge	Ritchie
Saturday 13	Bloxam	Hicks Beach	Ritchie	Synge

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 5%. Next London Stock Exchange Settlement. Thursday, 18th February, 1926.

	Middle Price. 3rd Feb.	Interest Yield. £ s. d.	Yield with Redemption. £ s. d.
English Government Securities.			
Consols 2½%	55⅞	4 9 0	—
War Loan 5% 1929-47	101 5/16	4 19 0	4 16 6
War Loan 4½% 1925-47	95½	4 14 6	4 18 0
War Loan 4% (Tax free) 1929-47 ..	101¼	3 19 0	3 19 0
War Loan 3½% 1st March 1928 ..	97¼xd	3 13 6	4 19 6
Funding 4% Loan 1960-90	88⅛	4 11 0	4 12 6
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years ..	93⅞	4 5 0	4 8 6
Conversion 4½% Loan 1940-44	96¼	4 13 6	4 17 0
Conversion 3½% Loan 1961	76⅛	4 12 0	—
Local Loans 3% Stock 1921 or after ..	64½	4 13 6	—
Bank Stock	248½	4 16 6	—
India 4½% 1950-55	88⅜	5 1 6	5 6 0
India 3½%	68	5 3 0	—
India 3%	58	5 4 0	—
Sudan 4½% 1939-73	92¼	4 18 0	4 19 0
Sudan 4% 1974	85¼	4 14 0	4 17 0
Transvaal Government 3% Guaranteed 1923-53 (Estimated life 19 years) ..	80¼	3 15 6	4 11 0
Colonial Securities.			
Canada 3% 1938	82½	3 13 0	4 18 0
Cape of Good Hope 4% 1916-36 ..	92½	4 7 0	4 19 6
Cape of Good Hope 3½% 1929-49 ..	78½	4 9 0	5 1 0
Commonwealth of Australia 5% 1945-75	101⅛	4 18 6	4 19 0
Gold Coast 4½% 1956	93	4 17 0	4 19 0
Jamaica 4½% 1941-71	94½	4 15 6	4 16 6
Natal 4% 1937	91¾	4 7 6	4 19 0
New South Wales 4½% 1935-45 ..	91	4 18 6	5 3 6
New South Wales 5% 1945-65.. ..	99¼	5 0 6	5 1 6
New Zealand 4½% 1945	94xd	4 16 0	4 19 6
New Zealand 4% 1929	96⅛	4 3 0	5 1 0
Queensland 3½% 1945	76⅜	4 11 6	5 8 6
South Africa 4% 1943-63	85½xd	4 13 0	4 17 0
S. Australia 3½% 1926-36	85½	4 1 6	5 7 0
Tasmania 3½% 1920-40	83	4 4 0	5 2 0
Victoria 4% 1940-60	84½	4 15 0	4 19 0
W. Australia 4½% 1935-65	91¼	4 19 0	4 19 6
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corpn.	62¼	4 16 0	—
Bristol 3½% 1925-65	74⅜	4 14 0	5 0 0
Cardiff 3½% 1935	87½	4 0 0	5 1 6
Croydon 3% 1940-60	68	4 8 0	5 1 0
Glasgow 2½% 1925-40	76½	3 5 0	4 11 0
Hull 3½% 1925-55	75½	4 13 0	5 1 6
Liverpool 3½% on or after 1942 at option of Corpn.	73¼	4 15 6	—
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	52½xd	4 15 6	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	62⅜xd	4 16 0	—
Manchester 3% on or after 1941 ..	62¼	4 16 0	—
Metropolitan Water Board 3% 'A' 1963-2003	63¾	4 14 0	4 14 6
Metropolitan Water Board 3% 'B' 1934-2003	63xd	4 15 0	4 16 6
Middlesex C.C. 3½% 1927-47	79½	4 8 0	5 0 6
Newcastle 3½% irredeemable	73½	4 15 6	—
Nottingham 3% irredeemable	62½	4 16 6	—
Plymouth 3% 1920-60	68	4 8 0	4 19 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture ..	81⅜	4 18 0	—
Gt. Western Rly. 5% Rent Charge ..	99½	5 0 6	—
Gt. Western Rly. 5% Preference ..	95½	5 5 6	—
L. North Eastern Rly. 4% Debenture ..	78½	5 2 0	—
L. North Eastern Rly. 4% Guaranteed	76¼	5 4 0	—
L. North Eastern Rly. 4% 1st Preference	69½	5 15 0	—
L. Mid. & Scot. Rly. 4% Debenture ..	80½	4 19 0	—
L. Mid. & Scot. Rly. 4% Guaranteed ..	80	5 0 0	—
L. Mid. & Scot. Rly. 4% Preference ..	75½	5 5 6	—
Southern Railway 4% Debenture ..	80½	4 19 0	—
Southern Railway 5% Guaranteed ..	99¼	5 0 0	—
Southern Railway 5% Preference ..	94	5 6 0	—